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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2011

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number 001-34057



**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 No.)

**2 Bethesda Metro Center, 14th Floor  
Bethesda, Maryland 20814  
(Address of principal executive offices)  
(301) 968-9300  
(Registrant's telephone number, including area code)**

Indicate by check mark whether the registrant (1) has filed all reports to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter earlier period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of the issuer's common stock, \$0.01 par value, outstanding as of April 30, 2011 was 128,828,759.

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AMERICAN CAPITAL AGENCY CORP.

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**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED BALANCE SHEETS**  
**(in thousands, except per share data)**

	March 31, 2011 (Unaudited)	December 31, 2010
<b>Assets:</b>		
Agency securities, at fair value (including pledged assets of \$23,263,144 and \$12,270,909, respectively)	\$ 28,192,575	\$ 13,510,280
Cash and cash equivalents	300,574	173,258
Restricted cash	75,221	76,094
Interest receivable	102,438	56,485
Derivative assets, at fair value	142,047	76,593
Receivable for agency securities sold	298,320	258,984
Principal payments receivable	42,667	75,524
Receivable under reverse repurchase agreements	—	247,438
Other assets	1,121	1,173
Total assets	<u>\$ 29,154,963</u>	<u>\$ 14,475,829</u>
<b>Liabilities:</b>		
Repurchase agreements	\$ 21,994,039	\$ 11,680,092
Other debt	67,845	72,927
Payable for agency securities purchased	3,504,600	727,374
Derivative liabilities, at fair value	92,658	78,590
Dividend payable	135,280	90,798
Obligation to return securities borrowed under reverse repurchase agreements, at fair value	—	245,532
Accounts payable and other accrued liabilities	16,040	8,452
Total liabilities	<u>25,810,462</u>	<u>12,903,765</u>
<b>Stockholders' equity:</b>		
Preferred stock, \$0.01 par value; 10,000 shares authorized, 0 shares issued and outstanding, respectively	—	—
Common stock, \$0.01 par value; 150,000 shares authorized, 128,829 and 64,856 shares issued and outstanding, respectively	1,288	649
Additional paid-in capital	3,314,119	1,561,908
Retained earnings	76,379	78,116
Accumulated other comprehensive loss	(47,285)	(68,609)
Total stockholders' equity	<u>3,344,501</u>	<u>1,572,064</u>
Total liabilities and stockholders' equity	<u>\$ 29,154,963</u>	<u>\$ 14,475,829</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**AND COMPREHENSIVE INCOME**  
**(Unaudited)**  
**(in thousands, except per share data)**

	For the three months ended	
	March 31,	
	2011	2010
<b>Interest income:</b>		
Interest income	\$ 164,493	\$ 38,797
Interest expense	35,648	15,510
Net interest income	<u>128,845</u>	<u>23,287</u>
<b>Other income, net:</b>		
Gain on sale of agency securities, net	4,220	27,408
Gain on derivative instruments and trading securities, net	11,529	5,920
Total other income, net	<u>15,749</u>	<u>33,328</u>
<b>Expenses:</b>		
Management fees	8,454	1,784
General and administrative expenses	2,597	1,681
Total expenses	<u>11,051</u>	<u>3,465</u>
<b>Net income</b>	<u>\$ 133,543</u>	<u>\$ 53,150</u>
<b>Net income per common share—basic and diluted</b>	<u>\$ 1.48</u>	<u>\$ 2.13</u>
<b>Weighted average number of common shares outstanding—basic and diluted</b>	<u>90,304</u>	<u>25,002</u>
<b>Dividends declared per common share</b>	<u>\$ 1.40</u>	<u>\$ 1.40</u>
<b>Comprehensive income:</b>		
<b>Net income</b>	<u>\$ 133,543</u>	<u>\$ 53,150</u>
<b>Other comprehensive income (loss):</b>		
Unrealized (loss) gain on available-for-sale securities, net	(39,802)	1,933
Unrealized gain (loss) on designated derivative instruments, net	61,126	(13,476)
Other comprehensive income (loss)	<u>21,324</u>	<u>(11,543)</u>
<b>Comprehensive income</b>	<u>\$ 154,867</u>	<u>\$ 41,607</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**(in thousands)**

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Retained Earnings</u>	<u>Accumulated Other Comprehensive (Loss) Income</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
<b>Balance, December 31, 2010</b>	—	\$ —	64,856	\$ 649	\$1,561,908	\$ 78,116	\$ (68,609)	\$1,572,064
Net income	—	—	—	—	—	133,543	—	133,543
Other comprehensive income (loss):								
Unrealized loss on available-for-sale securities, net	—	—	—	—	—	—	(39,802)	(39,802)
Unrealized gain on designated derivative instruments	—	—	—	—	—	—	61,126	61,126
Issuance of common stock	—	—	63,964	639	1,752,173	—	—	1,752,812
Issuance of restricted stock	—	—	9	—	—	—	—	—
Stock-based compensation	—	—	—	—	38	—	—	38
Common dividends declared	—	—	—	—	—	(135,280)	—	(135,280)
<b>Balance, March 31, 2011 (Unaudited)</b>	<u>—</u>	<u>\$ —</u>	<u>128,829</u>	<u>\$ 1,288</u>	<u>\$3,314,119</u>	<u>\$ 76,379</u>	<u>\$ (47,285)</u>	<u>\$3,344,501</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**  
**(in thousands)**

	<b>For the three months ended March 31,</b>	
	<b>2011</b>	<b>2010</b>
<b>Operating activities:</b>		
Net income	\$ 133,543	\$ 53,150
Adjustments to reconcile net income to net cash provided by operating activities:		
Amortization of agency security premiums and discounts, net	48,019	12,259
Amortization of interest rate swap termination fee	—	3,676
Stock-based compensation	38	17
Gain on sale of agency securities, net	(4,220)	(27,408)
Gain on derivative instruments and trading securities, net	(11,529)	(5,920)
Purchases of trading securities	(410,023)	—
Proceeds from sale of trading securities	410,586	—
Proceeds from reverse repurchase agreements, net	247,438	—
(Increase) decrease in interest receivable	(45,953)	1,732
Decrease in other assets	52	126
Increase (decrease) in accounts payable and other accrued liabilities	7,588	(1,334)
Net cash provided by operating activities	<u>375,539</u>	<u>36,298</u>
<b>Investing activities:</b>		
Purchases of agency securities	(14,688,180)	(3,056,410)
Proceeds from sale of agency securities	1,900,341	1,916,207
Net (payments on) proceeds from derivative instruments not designated as qualifying hedges	(227,507)	794
Principal collections on agency securities	795,371	175,205
Net cash used in investing activities	<u>(12,219,975)</u>	<u>(964,204)</u>
<b>Financing activities:</b>		
Cash dividends paid	(90,798)	(34,050)
Decrease (increase) in restricted cash	873	(7,002)
Proceeds from repurchase agreements, net	10,313,947	809,281
Repayments on other debt	(5,082)	—
Net proceeds from common stock issuances	1,752,812	62,138
Net cash provided by financing activities	<u>11,971,752</u>	<u>830,367</u>
Net change in cash and cash equivalents	127,316	(97,539)
Cash and cash equivalents at beginning of period	173,258	202,803
Cash and cash equivalents at end of period	<u>\$ 300,574</u>	<u>\$ 105,264</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**Note 1. Unaudited Interim Consolidated Financial Statements**

The interim consolidated financial statements of American Capital Agency Corp. (together with its consolidated subsidiary, is referred throughout this report as the “Company”, “we”, “us” and “our”) are prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial information and pursuant to the requirements for reporting on Form 10-Q and Article 10 of Regulation S-X. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

Our unaudited consolidated financial statements include the accounts of our wholly-owned subsidiary, American Capital Agency TRS, LLC, and variable interest entities for which the Company is the primary beneficiary. Significant intercompany accounts and transactions have been eliminated. In the opinion of management, all adjustments, consisting solely of normal recurring accruals, necessary for the fair presentation of financial statements for the interim period have been included. The current period’s results of operations are not necessarily indicative of results that ultimately may be achieved for the year. Through March 31, 2011, there has been no activity in American Capital Agency TRS, LLC.

**Note 2. Organization**

We were organized in Delaware on January 7, 2008, and commenced operations on May 20, 2008 following the completion of our initial public offering (“IPO”). Our common stock is traded on The NASDAQ Global Select Market under the symbol “AGNC”.

We have elected to be taxed as a real estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended (the “Code”). As such, we are required to distribute annually 90% of our taxable net income. As long as we qualify as a REIT, we will generally not be subject to U.S. federal or state corporate taxes on our taxable net income to the extent that we distribute all of our annual taxable net income to our stockholders. We are externally managed by American Capital Agency Management, LLC (our “Manager”), a majority-owned subsidiary of a wholly-owned portfolio company of American Capital, Ltd. (“American Capital”).

We earn income primarily from investing in residential mortgage pass-through securities and collateralized mortgage obligations (“CMOs”) on a leveraged basis. These investments consist of securities for which the principal and interest payments are guaranteed by government-sponsored entities (“GSEs”), such as the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or by a U.S. Government agency, such as the Government National Mortgage Association (“Ginnie Mae”). We refer to these types of securities as agency securities and the specific agency securities in which we invest as our investment portfolio.

Our principal objective is to preserve our net asset value while generating attractive risk-adjusted returns for distribution to our stockholders through regular quarterly dividends from our net interest income, which is the spread between the interest income earned on our interest earning assets and the interest costs of our borrowings and hedging activities, and net realized gains and losses on our investments and other supplemental hedging activities. We fund our investments primarily through short-term borrowings structured as repurchase agreements.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

**Note 3. Summary of Significant Accounting Policies**

***Investments in Agency Securities***

Accounting Standards Codification (“ASC”) Topic 320, *Investments—Debt and Equity Securities* (“ASC 320”), requires that at the time of purchase, we designate a security as held-to-maturity, available-for-sale or trading, depending on our ability and intent to hold such security to maturity. Securities classified as trading and available-for-sale are reported at fair value, while securities classified as held-to-maturity are reported at amortized cost. We may, from time to time, sell any of our agency securities as part of our overall management of our investment portfolio. Accordingly, we typically designate our agency securities as available-for-sale. All securities classified as available-for-sale are reported at fair value, with unrealized gains and losses reported in other comprehensive income (loss) (“OCI”), a component of stockholders’ equity. Upon the sale of a security, we determine the cost of the security and the amount of unrealized gains or losses to reclassify out of accumulated OCI into earnings based on the specific identification method.

Interest-only securities and inverse interest-only securities (collectively referred to as “interest-only securities”) represent our right to receive a specified proportion of the contractual interest flows of specific agency and CMO securities. Interest-only securities are measured at fair value through earnings in gain (loss) on derivative instruments and trading securities, net in our consolidated statements of operations and comprehensive income. Our investments in interest-only securities are included in agency securities, at fair value on the accompanying consolidated balance sheets.

We estimate the fair value of our agency securities based on a market approach using Level 2 inputs from third-party pricing services and dealer quotes. The third-party pricing services use pricing models that incorporate such factors as coupons, primary and secondary mortgage rates, prepayment speeds, spread to the Treasury and interest rate swap curves, convexity, duration, periodic and life caps and credit enhancements. The dealer quotes incorporate common market pricing methods, including a spread measurement to the Treasury or interest rate swap curve as well as underlying characteristics of the particular security including coupon, periodic and life caps, rate reset period, issuer, additional credit support and expected life of the security.

We evaluate securities for other-than-temporary impairment (“OTTI”) on at least a quarterly basis, and more frequently when economic or market conditions warrant such evaluation. Based on the criteria in ASC 320, the determination of whether a security is other-than-temporarily impaired involves judgments and assumptions based on subjective and objective factors. When an agency security is impaired, an OTTI is considered to have occurred if (i) we intend to sell the agency security (i.e. a decision has been made as the reporting date) or (ii) it is more likely than not that we will be required to sell the agency security before recovery of its amortized cost basis. If we intend to sell the security or if it is more likely than not that we will be required to sell the agency security before recovery of its amortized cost basis, the entire amount of the impairment loss, if any, is recognized in earnings as a realized loss and the cost basis of the security is adjusted to its fair value.

We did not recognize any OTTI charges on any of our agency securities for three months ended March 31, 2011 and 2010.

***Interest Income***

Interest income is accrued based on the outstanding principal amount of the agency securities and their contractual terms. Premiums and discounts associated with the purchase of agency securities are amortized or



**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

accreted into interest income over the projected lives of the securities, including contractual payments and estimated prepayments using the interest method in accordance with ASC Subtopic 310-20, *Receivables—Nonrefundable Fees and Other Costs* (“ASC 310-20”).

We estimate long-term prepayment speeds using a third-party service and market data. The third-party service estimates prepayment speeds using models that incorporate the forward yield curve, current mortgage rates, current mortgage rates of the outstanding loans, loan age, volatility and other factors. We review the prepayment speeds estimated by the third-party service and compare the results to market consensus prepayment speeds, if available. We also consider historical prepayment speeds and current market conditions to validate the reasonableness of the prepayment speeds estimated by the third-party service and based on our Manager’s judgment we may make adjustments to their estimates. Actual and anticipated prepayment experience is reviewed quarterly and effective yields are recalculated when differences arise between the previously estimated future prepayments and the amounts actually received plus current anticipated future prepayments. If the actual and anticipated future prepayment experience differs from our prior estimate of prepayments, we are required to record an adjustment in the current period to the amortization or accretion of premiums and discounts for the cumulative difference in the effective yield through the reporting date.

In addition, pursuant to ASC 310-20, the yield on our adjustable rate securities assumes that the securities reset at a rate equal to the underlying index rate in effect as of the date we acquired the security plus the stated margin. Consequently, future reset rate assumptions incorporated in our asset yields may differ materially from future reset rates implied by the forward yield curve and the actual reset rates ultimately achieved. Further, notwithstanding changes to our actual and projected constant prepayment rate (“CPR”) assumptions, the lower our reset rate assumption is pursuant to ASC 310-20 than the current fixed rate in effect, the greater the rate of premium amortization we will recognize over the initial fixed rate period.

Our adjustable rate portfolio was acquired for a premium above par value and most securities were acquired during a period of historically low index rates. Accordingly, the majority of the premium balance on our adjustable rate securities will be amortized prior to their first reset date, regardless of actual or forecasted prepayment speeds and changes in the underlying index rates prior to actual reset. Adjustable rate securities acquired during a different interest rate environment may experience a different premium amortization pattern even as current index rates remain near their historical lows.

***Derivative and other Hedging Instruments***

We maintain a risk management strategy, under which we use a variety of strategies to hedge some of our exposure to interest rate risk. The objective of our risk management strategy is to reduce fluctuations in book value and generate additional income distributable to stockholders. In particular, we attempt to mitigate the risk of the cost of our variable rate liabilities increasing during a period of rising interest rates. The principal instruments that we use are interest rate swaps and options to enter into interest rate swaps (“interest rate swaptions”). We also purchase or sell to-be-announced forward contracts (“TBAs”), forward contracts for specified agency securities and U.S. Treasury securities, purchase or write put or call options on TBA securities and invest in other types of mortgage derivatives, such as interest-only securities, and synthetic total return swaps, such as the Markit IOS Synthetic Total Return Swap Index (“Markit IOS Index”).

We account for derivative instruments in accordance with ASC Topic 815, *Derivatives and Hedging* (“ASC 815”). ASC 815 requires an entity to recognize all derivatives as either assets or liabilities in the balance sheet and to measure those instruments at fair value. Hedging instruments that are not derivatives under ASC 815 are accounted for in accordance with ASC 320.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives that are intended to hedge exposure to variability in expected future cash flows are considered cash flow hedges. For derivatives designated in qualifying cash flow hedging relationships, the effective portion of the fair value adjustments is initially recorded in OCI (a component of stockholders' equity) and reclassified to income at the time that the hedged transactions affect earnings. The ineffective portion of the fair value adjustments is immediately recognized in gain (loss) on derivative instruments and trading securities, net. When the underlying hedged transaction ceases to exist, any amounts that have been previously recorded in accumulated OCI would be reclassified to net income and all subsequent changes in the fair value of the instrument would be included in gain (loss) on derivative instruments and trading securities, net for each period until the derivative instrument matures or is settled. For derivatives not designated in hedging relationships under ASC 815, the fair value adjustments are recorded in gain (loss) on derivative instruments and trading securities, net. Derivatives in a gain position are reported as derivative assets at fair value and derivatives in a loss position are reported as derivative liabilities at fair value in our consolidated balance sheet. In our consolidated statements of cash flows, cash receipts and payments related to derivative instruments are classified according to the underlying nature or purpose of the derivative transaction, generally in the operating section for derivatives designated in hedging relationships and the investing section for derivatives not designated in hedging relationships.

The use of derivatives creates exposure to credit risk relating to potential losses that could be recognized in the event that the counterparties to these instruments fail to perform their obligations under the contracts. We attempt to minimize this risk by limiting our counterparties to major financial institutions with acceptable credit ratings and monitoring positions with individual counterparties.

*Interest rate swap agreements*

We use interest rate swaps to hedge the variable cash flows associated with short-term borrowings made under our repurchase agreement facilities. We generally enter into such derivatives with the intention of qualifying for hedge accounting under ASC 815.

We estimate the fair value of interest rate swaps based on inputs from a third-party pricing model. The third-party pricing model incorporates such factors as the Treasury curve, LIBOR rates, and the pay rate on the interest rate swaps. We also incorporate both our own and our counterparties' nonperformance risk in estimating the fair value of our interest rate swap and swaption agreements. In considering the effect of nonperformance risk, we consider the impact of netting and credit enhancements, such as collateral postings and guarantees, and have concluded that our own and our counterparty risk is not significant to the overall valuation of these agreements.

*Interest rate swaptions*

We may purchase interest rate swaptions to help mitigate the potential impact of increases or decreases in interest rates on the performance of our investment portfolio (referred to as "convexity risk"). The interest rate swaptions provide us the option to enter into an interest rate swap agreement for a predetermined notional amount, stated term and pay and receive interest rates in the future. The premium paid for interest rate swaptions is reported as an asset in our consolidated balance sheets. The premium is valued at an amount equal to the fair value of the swaption that would have the effect of closing the position adjusted for nonperformance risk, if any. The difference between the premium and the fair value of the swaption is reported in gain (loss) on derivative instruments and trading securities, net in our consolidated statement of operations and comprehensive income. If a swaption expires unexercised, the loss on the swaption would be equal to the premium paid. If we sell or exercise a swaption, the realized gain or loss on the swaption would be equal to the difference between the cash or the fair value of the underlying interest rate swap received and the premium paid.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

We estimate the fair value of interest rate swaptions based on the fair value of the future interest rate swap that we have the option to enter into as well as the remaining length of time that we have to exercise the option.

*TBA securities*

A TBA security is a futures contract for the purchase or sale of agency securities at a predetermined price, face amount, issuer, coupon and stated maturity on an agreed-upon future date. The specific agency securities delivered into the contract upon the settlement date, published each month by the Securities Industry and Financial Markets Association, are not known at the time of the transaction. TBA securities are exempt from ASC 815 and are accounted for under ASC 320 if there is no other way to purchase or sell that security, if delivery of that security and settlement will occur within the shortest period possible for that type of security and if it is probable at inception and throughout the term of the individual contract that physical delivery of the security will occur (referred to as the “regular-way” exception). Alternatively, we may designate the TBA security as a qualifying cash flow hedge under ASC 815 if the regular-way exception is not met and at the time of the purchase or sale of the security, and throughout the term of the individual contract, it is probable that the forecasted transaction will occur and the hedging relationship is expected to be highly effective. For TBA security contracts that we have entered into, we have generally not asserted that physical settlement is probable or that the forecasted transaction is probable of occurring and, therefore, we typically have not designated these forward commitments as hedging instruments. Realized and unrealized gains and losses associated with TBA contracts not subject to the regular-way exception or not designated as hedging instruments are recognized in our consolidated statement of operations and comprehensive income in the line item gain (loss) on derivative instruments and trading securities, net.

We estimate the fair value of TBA securities based on similar methods used to value agency securities.

*Put and call options on TBA securities*

We may purchase put and call options on TBA securities to hedge against short-term changes in interest rates. Under a purchased put option, we have the right to sell to the counterparty a specified TBA security at a predetermined price on the option exercise date in exchange for a premium at execution. Under a purchased call option, we have the right to purchase from the counterparty a specified TBA security at a predetermined price on the option exercise date in exchange for a premium at execution. The premium paid for a put or call option is reported as an asset in our consolidated balance sheets. The premium is valued at an amount equal to the fair value of the option that would have the effect of closing the position adjusted for nonperformance risk, if any. The difference between the premium and the fair value of the option is reported in gain (loss) on derivative instruments and trading securities, net in our consolidated statement of operations and comprehensive income. When a purchased put or call option expires unexercised, a realized loss is reported in our consolidated statement of operations and comprehensive income equal to the premium paid. When a purchased put or call option is exercised, a realized gain or loss is reported in our consolidated statement of operations and comprehensive income equal to the difference between the premium paid and the fair value of the exercised put or call option. In addition, a derivative asset is recorded in our consolidated balance sheet for the TBA security resulting from the put or call option exercise.

We may also write put and call options on TBA securities. Under a written put option, the counterparty has the right to sell us a specified TBA security at a predetermined price on the option exercise date in exchange for a premium at execution. Under a written call option, the counterparty has the right to purchase from us a specified TBA security at a predetermined price on the option exercise date in exchange for a premium at execution. The premium received from writing a put or call option is reported as a liability in our consolidated balance sheets.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(Unaudited)**

The premium is valued at an amount equal to the fair value of the option that would have the effect of closing the position adjusted for nonperformance risk, if any. The difference between the premium and the fair value of the option is reported in gain (loss) on derivative instruments and trading securities, net in our consolidated statement of operations and comprehensive income. When a written put or call option expires unexercised, a realized gain is reported in our consolidated statement of operations equal to the premium received. When we terminate a written put or call option, a realized gain or loss is reported in our consolidated statement of operations equal to the difference between the termination payment and the premium received. When a written put or call option is exercised, a realized gain or loss is reported in our consolidated statement of operations equal to the difference between the premium received and the fair value of the exercised put or call option. In addition, a derivative asset or liability is recorded in our consolidated balance sheet for the TBA security resulting from the put or call option exercise.

We estimate the fair value of put and call options on TBA securities based on the fair value of the underlying TBA security as well as the remaining length of time to exercise the option.

*Forward commitments to purchase or sell specified agency securities*

We may enter into a forward commitment to purchase or sell specified agency securities as a means of acquiring assets or as a hedge against short-term changes in interest rates. Contracts for the purchase or sale of specified agency securities are accounted for as derivatives if the delivery of the specified agency security and settlement extends beyond the shortest period possible for that type of security. We may designate the forward commitment as a qualifying cash flow hedge if at the time of the purchase or sale of the security, and throughout the term of the individual contract, it is probable that physical delivery of the security will occur. Realized and unrealized gains and losses associated with forward commitments not designated as hedging instruments are recognized in our consolidated statement of operations and comprehensive income in the line item gain (loss) on derivative instruments and trading securities, net.

We estimate the fair value of forward commitments to purchase or sell specified agency securities based on similar methods used to value agency securities as well as the remaining length of time of the forward commitment.

*U.S. Treasury securities*

We may purchase or sell short U.S. Treasury securities to help mitigate the potential impact of changes in interest rates on the performance of our portfolio. We may borrow securities to cover short sales of U.S. Treasury securities under reverse repurchase agreements. We account for these as securities borrowing transactions and recognize an obligation to return the borrowed securities at fair value on the balance sheet based on the value of the underlying borrowed securities as of the reporting date. Realized and unrealized gains and losses associated with purchases and short sales of Treasury Securities are recognized in gains (losses) on derivative instruments and trading securities, net in our consolidated statements of operations and comprehensive income.

*Total return swaps*

We may enter into total return swaps to obtain exposure to a security or market sector without owning such security or investing directly in that market sector. Total return swaps are agreements in which there is an exchange of cash flows whereby one party commits to make payments based on the total return (coupon plus the

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mark-to-market movement) of an underlying instrument or index in exchange for fixed or floating rate interest payments. To the extent the total return of the instrument or index underlying the transaction exceeds or falls short of the offsetting interest rate obligation, we will receive a payment from or make a payment to the counterparty.

The primary total return swap index in which we invest is the Markit IOS Index. Total return swaps based on the Markit IOS index are intended to synthetically replicate the performance of interest-only securities. We determine the fair value of our total return swaps based on published index prices. Realized and unrealized gains and losses associated with changes in market value of the underlying index and coupon interest are recognized in gain (loss) on derivative instruments and trading securities, net in our consolidated statements of operations and comprehensive income.

***Variable Interest Entities***

ASC Topic 810, *Consolidation* (“ASC 810”), requires a qualitative assessment in determining the primary beneficiary of a variable interest entities (“VIEs”) and ongoing assessments of control over such entities as well as additional disclosures for entities that have variable interests in VIEs.

We may enter into transactions involving a CMO trust (e.g. a VIE) whereby we transfer agency securities to an investment bank in exchange for cash proceeds and at the same time enter into a commitment with the same investment bank to purchase to-be-issued securities collateralized by the agency securities transferred. We will consolidate a CMO trust (as it relates to the assets transferred or contributed by us and the related liabilities issued by the trust) if we are the CMO trust’s primary beneficiary; that is, if we have a variable interest (or combination of variable interests) that provides us with a controlling financial interest in the CMO trust. An entity is deemed to have a controlling financial interest if the entity has the power to direct the activities of a VIE that most significantly impacts the VIE’s economic performance and the obligation to absorb losses or right to receive benefits from the VIE that could potentially be significant to the VIE. In determining if we have a controlling financial interest, we evaluate whether we share the power to control the selection of financial assets transferred to the CMO trust with an unrelated party. We may share power in the selection of assets for certain CMO trusts (i.e., both we and the unrelated party must consent to the transfer of such assets to the CMO trust); however, if our economic interest in the CMO trust is disproportionate to the shared power, we may be deemed to be the primary beneficiary.

***Recent Accounting Pronouncements***

In April 2011, the Financial Accounting Standards Board issued ASU No. 2011-03, *Transfers and Servicing (Topic 860): Reconsideration of Effective Control for Repurchase Agreements (“ASU 2011-03”)*, which is intended to improve the accounting for repurchase agreements by removing from the assessment of effective control the criterion requiring the transferor to have the ability to repurchase or redeem the financial assets on substantially the agreed terms, even in the event of default by the transferee, as well as implementation guidance related to that criterion. ASU 2011-03 is effective for the first interim or annual period beginning on or after December 15, 2011 and the guidance should be applied prospectively to transactions or modifications of existing transactions that occur on or after the effective date. Early adoption is not permitted. We do not believe the adoption of ASU 2011-03 will have a material impact on our consolidated financial statements.

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**Note 4. Agency Securities**

The following tables summarize our investments in agency securities as of March 31, 2011 (dollars in thousands):

	As of March 31, 2011			
	Fannie Mae	Freddie Mac	Ginnie Mae	Total
Agency securities classified as available-for-sale:				
Agency securities, par	\$17,870,437	\$9,072,872	\$ 115,198	\$27,058,507
Unamortized discount	(1,007)	(1,100)	—	(2,107)
Unamortized premium	773,614	315,195	4,766	1,093,575
Amortized cost	18,643,044	9,386,967	119,964	28,149,975
Gross unrealized gains	60,690	21,532	428	82,650
Gross unrealized losses	(88,710)	(61,319)	(372)	(150,401)
Available-for-sale securities, at fair value	18,615,024	9,347,180	120,020	28,082,224
Agency securities remeasured at fair value through earnings:				
Interest-only securities, amortized cost(1)	43,087	60,246	—	103,333
Gross unrealized gains	3,519	3,739	—	7,258
Gross unrealized losses	(197)	(43)	—	(240)
Agency securities measured at fair value through earnings, at fair value	46,409	63,942	—	110,351
Total agency securities, at fair value	\$18,661,433	\$9,411,122	\$ 120,020	\$28,192,575
Weighted average coupon as of March 31, 2011(2)	4.59%	4.49%	4.28%	4.56%
Weighted average yield as of March 31, 2011(3)	3.49%	3.45%	2.18%	3.47%
Weighted average yield for the three months ended March 31, 2011(3)	3.49%	3.23%	1.98%	3.39%

- (1) Interest-only securities represent the right to receive a specified portion of the contractual interest flows of the underlying unamortized principal balance of specific CMO securities. The underlying unamortized principal balance of our Fannie Mae and Freddie Mac interest-only securities was \$340.3 million and \$450.6 million, respectively, or a total of \$790.9 million, and the weighted average contractual interest we are entitled to receive was 5.27% of these amounts as of March 31, 2011.
- (2) The weighted average coupon includes the interest cash flows from our interest-only securities taken together with the interest cash flows from our fixed-rate, adjustable-rate and CMO securities as a percentage of the par value of our agency securities (excluding the underlying unamortized principal balance of our interest-only securities) as of March 31, 2011.
- (3) Incorporates an average future constant prepayment rate assumption of 10% based on forward rates as of March 31, 2011 and an average reset rate for adjustable rate securities of 2.73%, which is equal to the average underlying index rate of 0.91% based on the current spot rate in effect as of the date we acquired the securities and an average margin of 1.82%.

	As of March 31, 2011			Fair Value
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	
Fixed-Rate	\$22,968,175	\$ 45,533	\$(137,799)	\$22,875,909
Adjustable-Rate	4,898,586	30,010	(12,602)	4,915,994
CMO	283,214	7,107	—	290,321
Interest-only securities	103,333	7,258	(240)	110,351
Total agency securities	\$28,253,308	\$ 89,908	\$(150,641)	\$28,192,575

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The following tables summarize our investments in agency securities as of December 31, 2010 (dollars in thousands):

	As of December 31, 2010			
	Fannie Mae	Freddie Mac	Ginnie Mae	Total
Agency securities classified as available-for-sale:				
Agency securities, par	\$8,207,464	\$4,599,712	\$ 100,408	\$12,907,584
Unamortized discount	(930)	(1,044)	—	(1,974)
Unamortized premium	350,747	220,465	4,670	575,882
Amortized cost	8,557,281	4,819,133	105,078	13,481,492
Gross unrealized gains	56,181	11,929	384	68,494
Gross unrealized losses	(53,893)	(42,356)	(196)	(96,445)
Available-for-sale securities, at fair value	<u>8,559,569</u>	<u>4,788,706</u>	<u>105,266</u>	<u>13,453,541</u>
Agency securities remeasured at fair value through earnings:				
Interest-only securities, amortized cost(1)	18,957	33,447	—	52,404
Gross unrealized gains	1,559	3,356	—	4,915
Gross unrealized losses	(91)	(489)	—	(580)
Agency securities measured at fair value through earnings, at fair value	<u>20,425</u>	<u>36,314</u>	<u>—</u>	<u>56,739</u>
Total agency securities, at fair value	<u>\$8,579,994</u>	<u>\$4,825,020</u>	<u>\$ 105,266</u>	<u>\$13,510,280</u>
Weighted average coupon as of December 31, 2010(2)	4.63%	4.83%	4.37%	4.70%
Weighted average yield as of December 31, 2010(3)	3.34%	3.28%	2.14%	3.31%
Weighted average yield for the year ended December 31, 2010(3)	3.49%	3.42%	2.22%	3.44%

- (1) Interest-only securities represent the right to receive a specified portion of the contractual interest flows of the underlying unamortized principal balance of specific CMO securities. The underlying unamortized principal balance of our Fannie Mae and Freddie Mac interest-only securities was \$230.0 million and \$314.7 million, respectively, or a total of \$544.7 million, and the weighted average contractual interest we are entitled to receive was 4.95% of these amounts as of December 31, 2010.
- (2) The weighted average coupon includes the interest cash flows from our interest-only securities taken together with the interest cash flows from our fixed-rate, adjustable-rate and CMO securities as a percentage of the par value of our agency securities (excluding the underlying unamortized principal balance of our interest-only securities) as of December 31, 2010.
- (3) Incorporates an average future constant prepayment rate assumption of 12% based on forward rates as of December 31, 2010 and an average reset rate for adjustable rate securities of 2.76%, which is equal to the average underlying index rate of 0.94% based on the current spot rate in effect as of the date we acquired the securities and an average margin of 1.82%.

	As of December 31, 2010			
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Fair Value
Fixed-Rate	\$ 9,144,352	\$ 39,844	\$(82,717)	\$ 9,101,479
Adjustable-Rate	3,942,937	20,955	(13,728)	3,950,164
CMO	394,203	7,695	—	401,898
Interest-only securities	52,404	4,915	(580)	56,739
Total agency securities	<u>\$13,533,896</u>	<u>\$ 73,409</u>	<u>\$(97,025)</u>	<u>\$13,510,280</u>

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Actual maturities of agency securities are generally shorter than the stated contractual maturities. Actual maturities are affected by the contractual lives of the underlying mortgages, periodic principal payments and principal prepayments. The following table summarizes our agency securities classified as available-for-sale as of March 31, 2011 and December 31, 2010, according to their estimated weighted average life classification (dollars in thousands):

<u>Weighted Average Life</u>	<u>As of March 31, 2011</u>			<u>As of December 31, 2010</u>		
	<u>Fair Value</u>	<u>Amortized Cost</u>	<u>Weighted Average Coupon</u>	<u>Fair Value</u>	<u>Amortized Cost</u>	<u>Weighted Average Coupon</u>
Less than or equal to one year	\$ 4,243	\$ 4,296	4.39%	\$ —	\$ —	—
Greater than one year and less than or equal to three years	103,442	102,369	4.97%	133,123	132,520	5.05%
Greater than three years and less than or equal to five years	7,254,072	7,224,166	4.70%	3,841,282	3,821,992	4.92%
Greater than five years	20,720,467	20,819,144	4.30%	9,479,136	9,526,980	4.31%
<b>Total</b>	<u>\$28,082,224</u>	<u>\$20,149,975</u>	<u>4.40%</u>	<u>\$13,453,541</u>	<u>\$13,481,492</u>	<u>4.49%</u>

The weighted average life of our interest-only securities was 6.5 and 6.2 years as of March 31, 2011 and December 31, 2010, respectively.

The weighted average lives of the agency securities as of March 31, 2011 and December 31, 2010 incorporates anticipated future prepayment assumptions. As of March 31, 2011, our weighted average expected constant prepayment rate (“CPR”) over the remaining life of our aggregate investment portfolio is 10%. Our estimates differ materially for different types of securities and thus individual holdings have a wide range of projected CPRs. We estimate long-term prepayment assumptions for different securities using third-party services and market data. These third-party services estimate prepayment speeds using models that incorporate the forward yield curve, current mortgage rates, mortgage rates of the outstanding loans, loan age, volatility and other factors. We review the prepayment speeds estimated by the third-party services and compare the results to market consensus prepayment speeds, if available. We also consider historical prepayment speeds and current market conditions to validate reasonableness. As market conditions may change rapidly, we use our judgment in making adjustments for different securities. Various market participants could use materially different assumptions.

Our agency securities classified as available-for-sale are reported at fair value, with unrealized gains and losses excluded from earnings and reported in OCI, a component of stockholders’ equity. The following table summarizes changes in accumulated OCI for available-for-sale securities for the three months ended March 31, 2011 and 2010 (in thousands):

	<u>Beginning Balance</u>	<u>Unrealized Gains and (Losses)</u>	<u>Reversal of Prior Period Unrealized (Gains) and Losses on Realization</u>	<u>Ending Balance</u>
Three months ended March 31, 2011	\$(27,950)	(35,581)	(4,220)	\$(67,751)
Three months ended March 31, 2010	\$ 36,018	29,341	(27,408)	\$ 37,951



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The following table presents the gross unrealized loss and fair values of our available-for-sale agency securities by length of time that such securities have been in a continuous unrealized loss position as of March 31, 2011 and December 31, 2010 (in thousands):

	Less than 12 Months		Unrealized Loss Position For 12 Months or More		Total	
	Estimated Fair Value	Unrealized Loss	Estimated Fair Value	Unrealized Loss	Estimated Fair Value	Unrealized Loss
March 31, 2011	\$16,301,073	\$(150,401)	\$ —	\$ —	\$16,301,073	\$(150,401)
December 31, 2010	\$ 7,498,384	\$ (96,445)	\$ —	\$ —	\$ 7,498,384	\$ (96,445)

As of March 31, 2011, we did not intend to sell any of these agency securities and we believe it is not more likely than not we will be required to sell the agency securities before recovery of their amortized cost basis. The unrealized losses on these agency securities are not due to credit losses given the government-sponsored entity or government guarantees but are rather due to changes in interest rates and prepayment expectations.

**Gains and Losses**

The following table is a summary of our net gain from sale of agency securities for the three months ended March 31, 2011 and 2010 (in thousands):

	Three Months Ended	
	March 31, 2011	March 31, 2010
Agency securities sold, at cost	\$ (1,935,457)	\$ (2,117,510)
Proceeds from agency securities sold	1,939,677	2,144,918
Net gains on sale of agency securities	\$ 4,220	\$ 27,408
Gross gains on sale of agency securities	\$ 18,955	\$ 30,054
Gross losses on sale of agency securities	(14,735)	(2,646)
Net gains on sale of agency securities	\$ 4,220	\$ 27,408

For the three months ended March 31, 2011 and 2010, we recognized an unrealized gain of \$2.7 million and \$2.1 million in gain (loss) on derivative instruments and trading securities, net in our consolidated statements of operations and comprehensive income for the change in value of investments in interest-only securities. There were no sales of interest-only securities during the three months ended March 31, 2011 and 2010.

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**Pledged Assets**

The following tables summarize our agency securities pledged as collateral under repurchase agreements, other debt, derivative agreements and prime broker agreements by type as of March 31, 2011 and December 31, 2010 (in thousands):

<u>Agency Securities Pledged(1)</u>	<u>As of March 31, 2011</u>			<u>Total</u>
	<u>Fannie Mae</u>	<u>Freddie Mac</u>	<u>Ginnie Mae</u>	
<b>Under Repurchase Agreements</b>				
Fair value	\$ 14,511,221	\$ 8,481,140	\$ 315,041	\$ 23,307,402
Amortized cost	14,537,123	8,512,587	315,394	23,365,104
Accrued interest on pledged agency securities	51,327	28,702	1,089	81,118
<b>Under Other Debt Agreements</b>				
Fair value	72,446	—	—	72,446
Amortized cost	71,824	—	—	71,824
Accrued interest on pledged agency securities	299	—	—	299
<b>Under Derivative Agreements</b>				
Fair value	34,189	48,186	—	82,375
Amortized cost	33,965	48,122	—	82,087
Accrued interest on pledged agency securities	129	181	—	310
<b>Under Prime Broker Agreements</b>				
Fair value	21,408	44,901	—	66,309
Amortized cost	21,153	44,758	—	65,911
Accrued interest on pledged agency securities	80	156	—	236
<b>Total Fair Value of Agency Securities Pledged and Accrued Interest</b>	<b><u>\$ 14,691,099</u></b>	<b><u>\$ 8,603,266</u></b>	<b><u>\$ 316,130</u></b>	<b><u>\$ 23,610,495</u></b>

(1) Agency securities pledged include pledged amounts of \$265.4 million related to agency securities sold but not yet settled as of March 31, 2011.

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	Agency Securities Pledged(2)	As of December 31, 2010			Total
		Fannie Mae	Freddie Mac	Ginnie Mae	
<b>Under Repurchase Agreements</b>					
Fair value		\$7,707,046	\$4,554,541	\$ 95,066	\$12,356,653
Amortized cost		7,709,785	4,591,245	94,860	12,395,890
Accrued interest on pledged agency securities		27,589	15,642	332	43,563
<b>Under Other Debt Agreements</b>					
Fair value		77,906	—	—	77,906
Amortized cost		77,460	—	—	77,460
Accrued interest on pledged agency securities		325	—	—	325
<b>Under Derivative Agreements</b>					
Fair value		36,651	30,306	—	66,957
Amortized cost		36,343	30,382	—	66,725
Accrued interest on pledged agency securities		156	118	—	274
<b>Under Prime Broker Agreements</b>					
Fair value		6,061	5,997	2,032	14,090
Amortized cost		6,061	6,061	2,024	14,146
Accrued interest on pledged agency securities		28	21	8	57
<b>Total Fair Value of Agency Securities Pledged and Accrued Interest</b>		<b>\$7,855,762</b>	<b>\$4,606,625</b>	<b>\$ 97,438</b>	<b>\$12,559,825</b>

(2) Agency securities pledged include pledged amounts of \$244.7 million related to agency securities sold but not yet settled as of December 31, 2010.

The following table summarizes our agency securities pledged as collateral under repurchase agreements and other debt by remaining maturity as of March 31, 2011 and December 31, 2010 (dollars in thousands):

Remaining Maturity	As of March 31, 2011(1)			As of December 31, 2010(1)		
	Fair Value	Amortized Cost	Accrued Interest on Pledged Agency Securities	Fair Value	Amortized Cost	Accrued Interest on Pledged Agency Securities
30 days or less	\$19,617,054	\$19,671,265	\$ 67,809	\$ 9,909,121	\$ 9,943,239	\$ 35,151
31 - 59 days	3,762,794	3,765,663	13,608	2,525,438	2,530,111	8,737
60 - 90 days	—	—	—	—	—	—
Greater than 90 days	—	—	—	—	—	—
<b>Total</b>	<b>\$23,379,848</b>	<b>\$23,436,928</b>	<b>\$ 81,417</b>	<b>\$12,434,559</b>	<b>\$12,473,350</b>	<b>\$ 43,888</b>

(1) Agency securities pledged include pledged amounts of \$265.4 million and \$244.7 million related to agency securities sold but not yet settled as of March 31, 2011 and December 31, 2010, respectively.

**Securizations**

All of our CMO securities are backed by fixed or adjustable-rate agency securities and Fannie Mae or Freddie Mac guarantees the payment of interest and principal and acts as the trustee and administrator of their respective securitization trusts. Our involvement with the consolidated CMO trust described below is limited to the agency securities transferred to the trust by the investment bank and the CMO securities subsequently held by

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us. Accordingly, we are not required to provide the beneficial interest holders of the CMO securities any financial or other support. Whether or not we were involved with the formation of the CMO or purchased the securities from third parties in separate transactions, our maximum exposure to loss related to our involvement with CMO trusts is the fair value of the CMO securities and interest-only securities held by us. As of March 31, 2011 and December 31, 2010, the fair value of all of our CMO securities and interest-only securities, excluding the consolidated CMO trust discussed below, was \$400.7 million and \$458.6 million, respectively, or \$405.3 million and \$463.6 million, respectively, including the net asset value of the consolidated CMO trust discussed below.

During fiscal year 2010, we entered into a CMO transaction whereby we transferred agency securities with a cost basis of \$85.9 million to an investment bank in exchange for cash proceeds of \$80.8 million and at the same time entered into a commitment with the same investment bank to purchase a to-be-issued interest-only strip collateralized by the agency securities transferred for \$5.1 million. The investment bank contributed the transferred agency securities to a securitization trust held by Fannie Mae in exchange for CMO securities issued by the trust. Once the transferred agency securities were transferred to the securitization trust, Fannie Mae may only remove such securities upon certain events. Pursuant to the pre-existing commitment, the investment bank transferred to us the interest-only security issued by the trust. Our primary purpose for entering into this transaction was to eliminate the need to finance the principal class by transferring it to third parties, while still retaining the underlying economics of a financed transaction for the transferred securities, which we viewed as favorable. We concluded that we were the primary beneficiary of the CMO trust based on our disproportionate economic interest and, accordingly, we consolidated the CMO trust as it related to the agency securities transferred by us and the related liabilities issued by the trust. The effect of consolidating the CMO trust was that the interest-only security received was eliminated and we continued to recognize the assets transferred to the securitization trust in our total agency securities held and recorded a corresponding liability for the debt issued by the securitization trust, which is classified as other debt in our accompanying consolidated balance sheets. As of March 31, 2011, we recognized agency securities with a total fair value of \$72.4 million and a principal balance of \$68.4 million collateralized the remaining debt outstanding issued by the securitization trust of \$67.8 million. As of December 31, 2010, we recognized agency securities with a total fair value of \$77.9 million and a principal balance of \$73.5 million collateralized the remaining debt outstanding issued by the securitization trust of \$72.9 million. Such agency securities can only be used to settle this debt and the holder(s) of the debt issued by the securitization trust have no recourse to us. Further, there are no arrangements that could require us to provide financial support to this securitization trust. The consolidation did not materially impact our accompanying consolidated statements of operations and comprehensive income and consolidated statements of cash flows.

**Note 5. Repurchase Agreements and Other Debt**

We pledge certain of our agency securities as collateral under repurchase arrangements with financial institutions, the terms and conditions of which are negotiated on a transaction-by-transaction basis. Interest rates on these borrowings are generally based on LIBOR plus or minus a margin and amounts available to be borrowed are dependent upon the fair value of the agency securities pledged as collateral, which fluctuates with changes in interest rates, type of security and liquidity conditions within the banking, mortgage finance and real estate industries. In response to declines in fair value of pledged agency securities, lenders may require us to post additional collateral or pay down borrowings to re-establish agreed upon collateral requirements, referred to as margin calls. As of March 31, 2011 and December 31, 2010, we have met all margin call requirements. Due to their short-term nature, repurchase agreements are carried at cost, which approximates fair value.

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The following table summarizes our borrowings under repurchase arrangements and weighted average interest rates classified by original maturities as of March 31, 2011 and December 31, 2010 (dollars in thousands):

<u>Original Maturity</u>	<u>As of March 31, 2011</u>			<u>As of December 31, 2010</u>		
	<u>Borrowings Outstanding</u>	<u>Average Interest Rate</u>	<u>Weighted Average Days to Maturity</u>	<u>Borrowings Outstanding</u>	<u>Average Interest Rate</u>	<u>Weighted Average Days to Maturity</u>
30 days or less	\$ 5,684,592	0.28%	12	\$ 3,306,175	0.32%	12
31 - 60 days	8,714,973	0.28%	18	5,648,155	0.31%	20
61 - 90 days	5,773,164	0.28%	32	1,496,452	0.29%	33
Greater than 90 days	1,821,310	0.28%	21	1,229,310	0.29%	43
Total / Weighted Average	<u>\$21,994,039</u>	<u>0.28%</u>	<u>20</u>	<u>\$11,680,092</u>	<u>0.31%</u>	<u>22</u>

As of March 31, 2011 and December 31, 2010, we did not have an amount at risk with any counterparty greater than 10% of our stockholders' equity. We do not anticipate any defaults by our repurchase agreement counterparties.

Other debt of \$67.8 million and \$72.9 million as of March 31, 2011 and December 31, 2010, respectively, consists of other variable rate debt outstanding at LIBOR plus 25 basis points in connection with the consolidation of a structured transaction for which we are the primary beneficiary in our accompanying financial statements (see Note 4).

**Note 6. Derivative and Other Hedging Instruments**

In connection with our risk management strategy, we hedge a portion of our interest rate risk by entering into derivative and other hedging instrument contracts. We may enter into agreements for interest rate swap agreements, interest rate swaptions, interest rate cap or floor contracts and futures or forward contracts. We may also purchase or short TBA and U.S. Treasury securities, purchase or write put or call options on TBA securities or we may invest in other types of mortgage derivative securities, such as interest-only securities, and synthetic total return swaps, such as the IOS Index. Our risk management strategy attempts to manage the overall risk of the portfolio, reduce fluctuations in book value and generate additional income distributable to stockholders. For additional information regarding our derivative instruments and our overall risk management strategy, please refer to the discussion of derivative and other hedging instruments in Note 3.

As of March 31, 2011 and December 31, 2010, our derivative and other hedging instruments were comprised primarily of interest rate swaps, which have the effect of modifying the repricing characteristics of our repurchase agreements and cash flows on such liabilities. Our interest rate swaps are used to manage the interest rate risk created by our variable rate short-term repurchase agreements. Under our interest rate swaps, we typically pay a fixed-rate and receive a floating rate based on one-month LIBOR with terms usually ranging up to 5 years. Our interest rate swaps are generally designated as cash flow hedges under ASC 815.

Derivative and other hedging instruments entered into in addition to interest rate swap agreements are intended to supplement our use of interest rate swaps and we do not currently expect our use of these instruments to be the primary protection against interest rate risk for our portfolio. These instruments are accounted for as either derivatives, but are not typically designated as hedges under ASC 815, or trading securities. Therefore, any changes in the fair values of the contracts prior to their settlement date are included in earnings. We do not use derivative or other hedging instruments for speculative purposes.

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**(unaudited)**

**Derivatives Designated as Hedging Instruments**

As of March 31, 2011, we had net interest rate swap assets of \$20.0 million and, as of December 31, 2010, net interest rate swap liabilities of \$37.7 million. The tables below summarize information about our outstanding interest rate swaps as of March 31, 2011 and December 31, 2010 (dollars in thousands):

<u>Interest Rate Swaps Designated as Hedging Instruments</u>	<u>Balance Sheet Location</u>	<u>As of</u>	
		<u>March 31, 2011</u>	<u>December 31, 2010</u>
Interest rate swap assets	Derivative assets, at fair value	\$ 80,920	\$ 33,695
Interest rate swap liabilities	Derivative liabilities, at fair value	(60,872)	(71,417)
		<u>\$ 20,048</u>	<u>\$ (37,722)</u>

<u>Remaining Term for Interest Rate Swaps Designated as Hedging Instruments(1)</u>	<u>As of March 31, 2011</u>				
	<u>Notional Amount</u>	<u>Average Fixed Pay Rate</u>	<u>Average Receive Rate</u>	<u>Net Estimated Fair Value</u>	<u>Average Maturity (Years)</u>
1 year or less	\$ 750,000	1.40%	0.25%	\$ (3,685)	0.5
Greater than 1 year and less than 3 years	3,050,000	1.41%	0.25%	(20,377)	2.1
Greater than 3 years and less than 5 years	7,050,000	1.69%	0.25%	24,587	3.7
Greater than 5 years	4,100,000	2.35%	0.25%	19,523	5.1
Total	<u>\$ 14,950,000</u>	<u>1.80%</u>	<u>0.25%</u>	<u>\$ 20,048</u>	<u>3.6</u>

(1) Remaining term includes the effect of deferred start dates for forward starting swaps of \$5.6 billion ranging from one to nine months from March 31, 2011.

<u>Remaining Term for Interest Rate Swaps Designated as Hedging Instruments</u>	<u>As of December 31, 2010</u>				
	<u>Notional Amount</u>	<u>Average Fixed Pay Rate</u>	<u>Average Receive Rate</u>	<u>Net Estimated Fair Value</u>	<u>Average Maturity (Years)</u>
1 year or less	\$ 750,000	1.40%	0.26%	\$ (5,595)	0.7
Greater than 1 year and less than 3 years	2,850,000	1.54%	0.26%	(32,865)	2.5
Greater than 3 years and less than 5 years	2,850,000	1.78%	0.26%	738	4.3
Greater than 5 years	—	—	—	—	—
Total	<u>\$6,450,000</u>	<u>1.63%</u>	<u>0.26%</u>	<u>\$(37,722)</u>	<u>3.1</u>

The following table summarizes information about our outstanding interest rate swaps designated as hedging instruments for the three months ended March 31, 2011 and 2010 (in thousands):

<u>Interest Rate Swaps Designated as Hedging Instruments</u>	<u>Beginning Notional Amount</u>	<u>Additions</u>	<u>Expirations/ Terminations</u>	<u>Ending Notional Amount</u>
Three months ended March 31, 2011	\$6,450,000	8,500,000	—	\$ 14,950,000
Three months ended March 31, 2010	\$2,050,000	300,000	—	\$ 2,350,000

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
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The table below summarizes the effect of interest rate swaps designated as hedges under ASC 815 on our consolidated statement of operations for the three months ended March 31, 2011 and 2010 (in thousands):

<u>Interest Rate Swaps in Cash Flow Hedging Relationships</u>	<u>Amount of Gain or (Loss) Recognized in OCI (Effective Portion)</u>	<u>Location of Gain or (Loss) Reclassified from OCI into Earnings (Effective Portion)</u>	<u>Amount of Gain or (Loss) Reclassified from OCI into Earnings (Effective Portion)</u>	<u>Location of Gain or (Loss) Recognized in Earnings (Ineffective Portion and Amount Excluded from Effectiveness Testing)</u>	<u>Amount of Gain or (Loss) Recognized in Earnings (Ineffective Portion and Amount Excluded from Effectiveness Testing)</u>
Three months ended March 31, 2011	\$ 57,901	Interest expense	\$ (23,111)	Gain on derivative instruments and trading securities, net	\$ (132)
Three months ended March 31, 2010	\$ (17,334)	Interest expense	\$ (13,327)	Gain on derivative instruments and trading securities, net	\$ (192)

As of March 31, 2011, the amount of net interest expense expected to flow through our statement of operations over the next twelve months due to expected net settlements on our interest rate swaps is \$186.8 million.

Additionally, during the three months ended March 31, 2011 and 2010, we entered into or held forward contracts to purchase TBA and specified agency securities that were designated as cash flow hedges pursuant to ASC 815. The following table summarizes information about our outstanding forward contracts designated as hedging instruments for the three months ended March 31, 2011 and 2010 (dollars in thousands):

<u>Purchases of TBAs and Forward Settling Agency Securities Designated as Hedging Instruments</u>	<u>Beginning Notional Amount</u>	<u>Additions</u>	<u>Settlement / Expirations</u>	<u>Ending Notional Amount</u>	<u>Fair Value as of Period End</u>	<u>Average Maturity as of Period End (Months)</u>
Three months ended March 31, 2011	\$ 245,000	—	(245,000)	\$ —	\$ —	—
Three months ended March 31, 2010	\$ —	66,300	—	\$ 66,300	\$ (10)	1

The effective portion of gains or losses for TBAs and forward settling specified agency securities is initially recognized in OCI for designated cash flow hedges and is subsequently reclassified to OCI for available-for-sale securities upon acquisition of the underlying hedged item. The ineffective portion of gains or losses is recognized in earnings in gain (loss) on derivative instruments and trading securities, net.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

The table below summarizes the effect of purchases of TBAs and forward settling securities designated as hedges under ASC 815 on our consolidated statement of operations and comprehensive income for the three months ended March 31, 2011 and 2010 (in thousands).

<u>Purchases of TBAs and Forward Settling Securities in Cash Flow Hedging Relationships</u>	<u>Amount of Gain or (Loss) Recognized in OCI for Cash Flow Hedges (Effective Portion)</u>	<u>Amount of Gain or (Loss) Recognized in OCI for Cash Flow Hedges and Reclassified to OCI for Available-for-Sale Securities (Effective Portion)</u>	<u>Location of Gain or (Loss) Recognized in Earnings (Ineffective Portion and Amount Excluded from Effectiveness Testing)</u>	<u>Amount of Gain or (Loss) Recognized in Earnings (Ineffective Portion and Amount Excluded from Effectiveness Testing)</u>
Three months ended March 31, 2011	\$ 12	\$ (3,213)	Gain on derivative instruments and trading securities, net	\$ —
Three months ended March 31, 2010	\$ (10)	\$ —	Gain on derivative instruments and trading securities, net	\$ —

***Derivatives Not Designated as Hedging Instruments***

As of March 31, 2011 and December 31, 2010, we had contracts to purchase (“long position”) and sell (“short position”) TBA and specified agency securities on a forward basis. Following is a summary of our long and short TBA and forward settling positions as of March 31, 2011 and December 31, 2010 (in thousands).

<u>Purchase and Sale Contracts for TBA and Forward Settling Securities Not Designated as Hedging Instruments</u>	<u>As of March 31, 2011</u>		<u>As of December 31, 2010</u>	
	<u>Notional Amount</u>	<u>Fair Value</u>	<u>Notional Amount</u>	<u>Fair Value</u>
15 Year Securities:				
Purchase	\$ 3,823,000	\$(24,988)	\$ 1,532,000	\$10,297
Sale	(2,342,000)	9,527	(1,454,500)	(3,127)
15 Year Securities, Net	<u>1,481,000</u>	<u>(15,461)</u>	<u>77,500</u>	<u>7,170</u>
20 Year Securities:				
Purchase	—	—	125,000	(2,116)
Sale	—	—	—	—
20 Year Securities, Net	<u>—</u>	<u>—</u>	<u>125,000</u>	<u>(2,116)</u>
30 Year Securities:				
Purchase	494,000	(1,204)	784,303	3,509
Sale	(3,059,000)	9,584	(1,835,700)	6,738
30 Year Securities, Net	<u>(2,565,000)</u>	<u>8,380</u>	<u>(1,051,397)</u>	<u>10,247</u>
Total, Net	<u>\$ (1,084,000)</u>	<u>\$ (7,081)</u>	<u>\$ (848,897)</u>	<u>\$15,301</u>



**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

As of March 31, 2011 and December 31, 2010, we had interest rate swap agreements outstanding that were not designated as hedges under ASC 815 consisting of interest rate swap agreements where we pay a fixed rate (“payer interest rate swaps”) and interest rate swap agreements where we receive a fixed rate (“receiver interest rate swaps”), summarized in the tables below (dollars in thousands).

<u>Interest Rate Swaps Not Designated as Hedging Instruments</u>	<u>As of March 31, 2011</u>					
	<u>Maturity</u>	<u>Notional Amount</u>	<u>Average Fixed Pay (Receive) Rate</u>	<u>Average Receive (Pay) Rate</u>	<u>Fair Value</u>	<u>Average Maturity (Years)</u>
Payer interest rate swaps	2015	\$250,000	1.66%	0.26%	\$ 6,036	4.6
Receiver interest rate swaps	2015	\$ 100,000	-2.50%	-0.25%	\$ 1,539	4.5

  

<u>Interest Rate Swaps Not Designated as Hedging Instruments</u>	<u>As of December 31, 2010</u>					
	<u>Maturity</u>	<u>Notional Amount</u>	<u>Average Fixed Pay (Receive) Rate</u>	<u>Average Receive (Pay) Rate</u>	<u>Fair Value</u>	<u>Average Maturity (Years)</u>
Payer interest rate swaps	2015	\$250,000	1.66%	0.26%	\$ 4,140	4.9
Receiver interest rate swaps	2015	\$200,000	-2.26%	-0.26%	\$ 2,743	4.7

As of March 31, 2011 and December 31, 2010, we had interest rate swaption agreements outstanding consisting of options to enter into interest rate swaps in the future where we would pay a fixed rate (“payer swaptions”) and options to enter into interest rate swaps in the future where we would receive a fixed rate (“receiver swaptions”), as summarized in the tables below (dollars in thousands):

<u>Swaption</u>	<u>As of March 31, 2011</u>						
	<u>Option</u>			<u>Underlying Swap</u>			
	<u>Cost</u>	<u>Fair Value</u>	<u>Average Months to Expiration</u>	<u>Notional Amount</u>	<u>Pay Rate</u>	<u>Average Receive Rate</u>	<u>Average Term (Years)</u>
Payer	\$20,372	\$21,287	7	\$2,100,000	3.16%	1M LIBOR	6.1
Receiver	369	2	1	250,000	1M LIBOR	1.75%	5.0
	<u>\$20,741</u>	<u>\$21,289</u>		<u>\$2,350,000</u>			

  

<u>Swaption</u>	<u>As of December 31, 2010</u>						
	<u>Option</u>			<u>Underlying Swap</u>			
	<u>Cost</u>	<u>Fair Value</u>	<u>Average Months to Expiration</u>	<u>Notional Amount</u>	<u>Pay Rate</u>	<u>Average Receive Rate</u>	<u>Average Term (Years)</u>
Payer	\$4,596	\$16,766	4	\$850,000	2.28%	1M LIBOR	5.6

As of March 31, 2011, we had total return swaps outstanding linked to the Markit IOS Index, summarized in the table below, where we are entitled to receive the stated coupon, net of an implied financing cost equal to one-month LIBOR, plus/(minus) increases/(decreases) in the index market value (“long position”). Long positions linked to the index are intended to synthetically replicate the performance of interest-only securities. Therefore, as interest rates rise and prepayment expectations decline, the index will typically increase in value and, as interest rates fall and prepayment expectations rise, the index will typically decrease in value. As the holder of the long position, we are required to pay a monthly periodic cash settlement equal to a decrease in the index value and, conversely, we are entitled to receive a periodic cash settlement equal to an increase in the index value. Changes, or mark-to-market movements, in the index are measured from the preceding periodic

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
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measurement date. Periodic cash settlements of the index mark-to-market movements are netted against periodic cash settlements of the stated coupon, less the implied financing costs. As of March 31, 2011, the linked index values of our total return swaps totaled \$215.9 million. As of March 31, 2011, the fair value of these total return swaps reported in derivative assets, at fair value on our consolidated balance sheet was \$7.6 million and represents the unrealized mark-to-market change in the linked index value since the preceding measurement date through March 31, 2011. Realized and unrealized gains and losses associated with changes in the underlying linked index value and net coupon interest are recognized in gain (loss) on derivative instruments and trading securities, net in our consolidated statements of operations and comprehensive income. We did not have any total return swaps outstanding as of December 31, 2010.

<u>Markit IOS Sub-Index</u>	<u>As of March 31, 2011</u>		
	<u>Notional Amount</u>	<u>Expiration Date</u>	<u>Fair Value</u>
5.0%, 30-year, fixed rate, Fannie Mae MBS pools	\$ 303,817	January 2040	\$ 3,038
5.5%, 30-year, fixed rate, Fannie Mae MBS pools	490,713	January 2039	2,760
6.0%, 30-year, fixed rate, Fannie Mae MBS pools	220,784	January 2039	1,760
	<u>\$ 1,015,314</u>		<u>\$ 7,558</u>

The table below summarizes fair value information about our derivatives outstanding that were not designated as hedging instruments as of March 31, 2011 and December 31, 2010 (in thousands).

<u>Derivatives Not Designated as Hedging Instruments</u>	<u>Balance Sheet Location</u>	<u>As of</u>	
		<u>March 31, 2011</u>	<u>December 31, 2010</u>
Purchase of TBA and forward settling agency securities	Derivative assets, at fair value	\$ 407	\$ 2,929
Sale of TBA and forward settling agency securities	Derivative assets, at fair value	24,298	16,320
Markit IOS Index total return swaps	Derivative assets, at fair value	7,558	—
Payer interest rate swaps	Derivative assets, at fair value	6,036	4,140
Receiver interest rate swaps	Derivative assets, at fair value	1,539	2,743
Payer swaptions	Derivative assets, at fair value	21,287	16,766
Receiver swaptions	Derivative assets, at fair value	2	—
		<u>\$ 61,127</u>	<u>\$ 42,898</u>
Purchase of TBA and forward settling agency securities	Derivative liabilities, at fair value	\$ (26,598)	\$ (2,193)
Sale of TBA and forward settling agency securities	Derivative liabilities, at fair value	(5,188)	(1,755)
		<u>\$ (31,786)</u>	<u>\$ (3,948)</u>

Additionally, as of December 31, 2010, we had obligations to return treasury securities borrowed under reverse repurchase agreements accounted for as securities borrowing transactions for a fair value of \$245.5 million. The borrowed securities were used to cover short sales of treasury securities from which we received total proceeds of \$244.8 million. The increase in fair value of the borrowed securities through December 31, 2010 was recorded as a loss of \$0.7 million in gain (loss) on derivative instruments and trading securities, net in our consolidated statement of operations and comprehensive income for fiscal year 2010. As of March 31, 2011, we had no outstanding amounts under reverse repurchase agreements.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

The tables below summarize the effect of derivative instruments not designated as hedges under ASC 815 on our consolidated statement of operations and comprehensive income for the three months ended March 31, 2011 and 2010 (in thousands):

<u>Derivatives Not Designated as Hedging Instruments</u>	<b>For the Three Months Ended March 31, 2011</b>				
	Notional Amount as of December 31, 2010	Additions	Settlement, Expiration or Exercise	Notional Amount as of March 31, 2011	Amount of Gain/(Loss) Recognized in Income on Derivatives(1)
Purchase of TBA and forward settling agency securities	\$ 512,303	12,267,693	(8,463,896)	\$4,316,100	\$ (15,795)
Sale of TBA and forward settling agency securities	\$1,361,200	18,320,770	(14,281,935)	\$5,400,035	18,863
Payer interest rate swaps	\$ 250,000	—	—	\$ 250,000	965
Receiver interest rate swaps	\$ 200,000	—	(100,000)	\$ 100,000	(1,773)
Payer swaptions	\$ 850,000	1,550,000	(300,000)	\$2,100,000	(5,036)
Put options	\$ —	(200,000)	200,000	\$ —	1,133
Receiver swaptions	\$ —	250,000	—	\$ 250,000	(367)
Short sales of U.S. government securities	\$ 250,000	2,915,000	(3,165,000)	\$ —	869
Markit IOS total return swaps—long	\$ —	1,089,420	(74,106)	\$1,015,314	9,556
					<u>\$ 8,415</u>

(1) This amount excludes \$2.7 million recorded as a gain for interest-only securities re-measured at fair value through earnings, a loss of \$0.1 million for hedge ineffectiveness on our outstanding interest rate swaps designated as hedging instruments and a gain of \$0.6 million from trading securities in gain on derivative instruments and trading securities, net in our consolidated statement of operations and comprehensive for the three months ended March 31, 2011.

<u>Derivatives Not Designated as Hedging Instruments</u>	<b>For the Three Months Ended March 31, 2010</b>				
	Notional Amount as of December 31, 2009	Additions	Settlement, Expiration or Exercise	Notional Amount as of March 31, 2010	Amount of Gain/(Loss) Recognized in Income on Derivatives(1)
Purchase of TBA and forward settling agency securities	\$ 596,516	835,876	(1,247,724)	\$ 184,668	\$ 4,238
Sale of TBA and forward settling agency securities	\$ 616,747	966,166	(1,247,913)	\$ 335,000	2,746
Payer Swaptions	\$ 200,000	—	—	\$ 200,000	(1,791)
Receiver Swaptions	\$ 100,000	100,000	(100,000)	\$ 100,000	(376)
Put Options	\$ —	75,000	—	\$ 75,000	37
Interest rate swaps	\$ —	100,000	(100,000)	\$ —	(831)
					<u>\$ 4,023</u>

(1) This amount excludes \$2.1 million recorded as a gain for interest-only securities remeasured at fair value through earnings and a loss of \$0.2 million for hedge ineffectiveness on our outstanding interest rate swaps designated as hedging instruments in gain (loss) on derivative instruments, net in our consolidated statements of operations and comprehensive for the three months ended March 31, 2010.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
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***Credit Risk-Related Contingent Features***

The use of derivatives creates exposure to credit risk relating to potential losses that could be recognized in the event that the counterparties to these instruments fail to perform their obligations under the contracts. We minimize this risk by limiting our counterparties to major financial institutions with acceptable credit ratings and monitoring positions with individual counterparties. In addition, we may be required to pledge assets as collateral for our derivatives, whose amounts vary over time based on the market value, notional amount and remaining term of the derivative contract. In the event of a default by a counterparty we may not receive payments provided for under the terms of our derivative agreements, and may have difficulty obtaining our assets pledged as collateral for our derivatives. The cash and cash equivalents and agency securities pledged as collateral for our derivative instruments is included in restricted cash and agency securities, respectively, on our consolidated balance sheets.

Each of our ISDA Master Agreements contains provisions under which we are required to fully collateralize our obligations under the swap instrument if at any point the fair value of the swap represents a liability greater than the minimum transfer amount contained within our agreements. We were also required to post initial collateral upon execution of certain of our swap transactions. If we breach any of these provisions, we will be required to settle our obligations under the agreements at their termination values.

Further, each of our ISDA Master Agreements also contains a cross default provision under which a default under certain of our other indebtedness in excess of a certain threshold causes an event of default under the agreement. Threshold amounts vary by lender. Following an event of default, we could be required to settle our obligations under the agreements at their termination values. Additionally, under certain of our ISDA Master Agreements, we could be required to settle our obligations under the agreements at their termination values if we fail to maintain certain minimum shareholders' equity thresholds or our REIT status or comply with limits on our leverage above certain specified levels.

As of March 31, 2011, the fair value of our interest rate swaps in a liability position related to these agreements was \$60.9 million. We had agency securities with fair values of \$82.4 million, and restricted cash of \$75.2 million, or \$157.6 million in total agency securities and restricted cash, pledged as collateral against our interest rate swaps, including initial collateral posted upon execution of interest rate swap and total return swap transactions, as of March 31, 2011. Termination values of interest rate swaps in a liability position totaled \$62.7 million as of March 31, 2011. The difference between the fair value liability and the termination liability represents accrued interest and an adjustment for nonperformance risk of our counterparties.

**Note 7. Fair Value Measurements**

ASC 820 provides for a three-level valuation hierarchy for disclosure of fair value measurement. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. A financial instrument's categorization within the hierarchy is based upon the lowest level of input that is significant to the fair value measurement. There were no transfers between hierarchy levels during the three months ended March 31, 2011 and 2010. The three levels of hierarchy are defined as follows:

- Level 1 Inputs – Quoted prices (unadjusted) for identical unrestricted assets and liabilities in active markets that are accessible at the measurement date.
- Level 2 Inputs – Quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3 Inputs – Instruments with primarily unobservable market data that cannot be corroborated.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
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All of our agency securities and derivative and hedging assets and liabilities were valued based on the income or market approach using Level 2 inputs as of March 31, 2011 and December 31, 2010.

**Note 8. Stockholders' Equity****Equity Offerings**

During the three months ended March 31, 2011, we completed two follow-on public offerings of shares of our common stock summarized in the table below (in thousands, except per share amounts):

	<u>Public Offering</u>	<u>Public Offering Price per Share(1)</u>	<u>Shares</u>	<u>Net Proceeds(2)</u>
January 2011		\$ 28.00	26,910	\$ 719,310
March 2011		\$ 27.72	32,200	892,434
Total			<u>59,110</u>	<u>\$ 1,611,744</u>

(1) Public offering price per share is gross of underwriters' discount, if applicable

(2) Net proceeds are net of the underwriters' discount, if applicable and other offering costs

**Controlled Equity Offering<sup>SM</sup> Program**

We have a sales agreement with an underwriter to, from time to time, publicly offer and sell up to 15 million shares of our common stock in privately negotiated and/or at-the-market transactions. During the three months ended March 31, 2011, we sold 4.3 million shares of our common stock under the sales agreement at an average offering price of \$29.41 per share for proceeds, net of the underwriter's discount and other program costs, of \$126.1 million. As of March 31, 2011, 6.3 million shares of our common stock remain under the sales agreement.

**Dividend Reinvestment and Direct Stock Purchase Plan**

We sponsor a dividend reinvestment and direct stock purchase plan through which stockholders may purchase additional shares of our common stock by reinvesting some or all of the cash dividends received on shares of our common stock. Stockholders may also make optional cash purchases of shares of our common stock subject to certain limitations detailed in the plan prospectus. During the three months ended March 31, 2011, we issued 0.5 million shares under the plan for net cash proceeds of \$14.9 million. As of March 31, 2011, there were 4.7 million shares available for issuance under the plan.

**Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) is designed to provide a reader of American Capital Agency Corp.’s consolidated financial statements with a narrative from the perspective of management. Our MD&A is presented in five sections:

- Executive Overview
- Financial Condition
- Results of Operations
- Liquidity and Capital Resources
- Forward-Looking Statements

**EXECUTIVE OVERVIEW**

American Capital Agency Corp. (“AGNC”, the “Company”, “we”, “us” and “our”) was organized on January 7, 2008 and commenced operations on May 20, 2008 following the completion of our initial public offering (“IPO”). Our common stock is traded on The NASDAQ Global Select Market under the symbol “AGNC”.

We earn income primarily from investing in residential mortgage pass-through securities and collateralized mortgage obligations (“CMOs”) on a leveraged basis. These investments consist of securities for which the principal and interest payments are guaranteed by U.S. Government-sponsored entities (“GSEs”), such as the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or by a U.S. Government agency, such as the Government National Mortgage Association, (“Ginnie Mae”). We refer to these types of securities as agency securities and the specific agency securities in which we invest as our investment portfolio.

Our principal objective is to preserve our net asset value while generating attractive risk-adjusted returns for distribution to our stockholders through regular quarterly dividends from our net interest income, which is the spread between the interest income earned on our interest earning assets and the interest costs of our borrowings and hedging activities, and net realized gains and losses on our investments and other supplemental hedging activities. We fund our investments primarily through short-term borrowings structured as repurchase agreements.

We have elected to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended (the “Code”). As such, we are required to distribute annually 90% of our taxable net income. As long as we qualify as a REIT, we will generally not be subject to U.S. federal or state corporate taxes on our taxable net income to the extent that we distribute all of our annual taxable net income to our stockholders. We are externally managed by American Capital Agency Management, LLC (“our Manager”), a majority-owned subsidiary of a wholly-owned portfolio company of American Capital, Ltd. (“American Capital”).

**Our Investment Strategy**

Our investment strategy is to manage an investment portfolio consisting exclusively of agency securities (other than for hedging purposes) that seeks to generate attractive, risk-adjusted returns. Specifically, our investment strategy is designed to:

- manage an investment portfolio consisting of agency securities that seeks to generate attractive risk-adjusted returns;
- capitalize on discrepancies in the relative valuations in the agency securities market;
- manage financing, interest and prepayment rate risks;

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- preserve our net asset value;
- provide regular quarterly distributions to our stockholders;
- qualify as a REIT; and
- remain exempt from the requirements of the Investment Company Act of 1940, as amended (the "Investment Company Act").

## FINANCIAL CONDITION

As of March 31, 2011 and December 31, 2010, our investment portfolio consisted of \$28.2 billion and \$13.5 billion, respectively, of agency securities. The following tables summarize certain characteristics of our investment portfolio as of March 31, 2011 (dollars in thousands):

	As of March 31, 2011					
	Par Value	Amortized Cost	Amortized Cost Basis	Fair Value	Weighted Average Coupon	Yield(1)
<b>Agency Securities Classified as Available-For-Sale:</b>						
Fannie Mae	\$ 17,870,437	\$ 18,643,044	104.3%	\$ 18,615,024	4.51%	3.46%
Freddie Mac	9,072,872	9,386,967	103.5%	9,347,180	4.21%	3.37%
Ginnie Mae	115,198	119,964	104.1%	120,020	4.28%	2.18%
<b>Total / Weighted Average Available- For-Sale Agency Securities</b>	<b>\$27,058,507</b>	<b>\$28,149,975</b>	<b>104.0%</b>	<b>\$28,082,224</b>	<b>4.40%</b>	<b>3.42%</b>
Fixed-Rate	\$22,084,799	\$22,968,175	104.0%	\$22,875,909	4.40%	3.59%
Adjustable-Rate	4,697,849	4,898,586	104.3%	4,915,994	4.45%	2.70%
CMO	275,861	283,214	102.7%	290,321	3.82%	2.75%
<b>Total / Weighted Average Available- For-Sale Agency Securities</b>	<b>\$27,058,509</b>	<b>\$28,149,975</b>	<b>104.0%</b>	<b>\$28,082,224</b>	<b>4.40%</b>	<b>3.42%</b>

	As of March 31, 2011				
	Underlying Unamortized Principal Balance	Amortized Cost	Fair Value	Weighted Average Coupon	Yield(1)
<b>Agency Securities Remeasured at Fair Value Through Earnings:</b>					
<b>Interest-Only Securities</b>					
Fannie Mae	\$ 340,353	\$ 43,087	\$ 46,409	4.66%	15.88%
Freddie Mac	450,586	60,246	63,942	5.74%	15.86%
<b>Total / Weighted Average Agency Securities Remeasured at Fair Value Through Earnings</b>	<b>\$ 790,939</b>	<b>\$ 103,333</b>	<b>\$ 110,351</b>	<b>5.27%</b>	<b>15.87%</b>

(1) Incorporates an average future constant prepayment rate assumption of 10% based on forward rates as of March 31, 2011 and an average reset rate for adjustable rate securities of 2.73%, which is equal to the average underlying index rate of 0.91% based on the current spot rate in effect as of the date we acquired the securities and an average margin of 1.82%.

Interest-only securities represent the right to receive a specified portion of the contractual interest flows of the underlying unamortized principal balance of specific CMO securities. The interest cash flows from our interest-only securities taken together with interest cash flows from our fixed-rate, adjustable-rate and CMO securities, total 4.56% of the combined par value our agency securities (excluding the underlying unamortized principal balance of our interest-only securities) as of March 31, 2011. The combined weighted average yield of our agency portfolio was 3.47% as of March 31, 2011.

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The following table summarizes certain characteristics of our investment portfolio as of December 31, 2010 (dollars in thousands):

	As of December 31, 2010					
	Par Value	Amortized Cost	Amortized Cost Basis	Fair Value	Weighted Average Coupon	Yield(1)
<b>Agency Securities Classified as Available-For-Sale:</b>						
Fannie Mae	\$ 8,207,464	\$ 8,557,281	104.3%	\$ 8,559,569	4.51%	3.31%
Freddie Mac	4,599,712	4,819,133	104.8%	4,788,706	4.45%	3.11%
Ginnie Mae	100,408	105,078	104.7%	105,266	4.37%	2.14%
<b>Total / Weighted Average Available- For-Sale Agency Securities</b>	<b>12,907,584</b>	<b>\$ 13,481,492</b>	<b>104.4%</b>	<b>\$ 13,453,541</b>	<b>4.49%</b>	<b>3.23%</b>
Fixed-Rate	8,779,691	\$ 9,144,352	104.2%	\$ 9,101,479	4.29%	3.45%
Adjustable-Rate	3,745,363	3,942,937	105.3%	3,950,164	4.96%	2.69%
CMO	382,530	394,203	103.1%	401,898	4.27%	3.52%
<b>Total / Weighted Average Available- For-Sale Agency Securities</b>	<b>\$ 12,907,584</b>	<b>\$ 13,481,492</b>	<b>104.4%</b>	<b>\$ 13,453,541</b>	<b>4.49%</b>	<b>3.23%</b>

	As of December 31, 2010				
	Underlying Unamortized Principal Balance	Amortized Cost	Fair Value	Weighted Average Coupon	Yield(1)
<b>Agency Securities Remeasured at Fair Value Through Earnings:</b>					
<b>Interest-Only Securities</b>					
Fannie Mae	\$ 229,980	\$ 18,957	\$ 20,425	4.18%	15.48%
Freddie Mac	314,705	33,447	36,314	5.52%	27.23%
<b>Total / Weighted Average Agency Securities Remeasured at Fair Value Through Earnings</b>	<b>\$ 544,685</b>	<b>\$ 52,404</b>	<b>\$ 56,739</b>	<b>4.95%</b>	<b>22.98%</b>

(1) Incorporates an average future constant prepayment rate assumption of 12% based on forward rates as of December 31, 2010 and an average reset rate for adjustable rate securities of 2.76%, which is equal to the average underlying index rate of 0.94% based on the current spot rate in effect as of the date we acquired the securities and an average margin of 1.82%.

As of December 31, 2010, the interest cash flows from our interest-only securities taken together with interest cash flows from our fixed-rate, adjustable-rate and CMO securities, total 4.70% of the combined par value our agency securities (excluding the underlying unamortized principal balance of our interest-only securities). The combined weighted average yield of our agency portfolio was 3.31% as of December 31, 2010.



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As of March 31, 2011 and December 31, 2010, we held fixed-rate pass-through agency securities, pass-through agency securities collateralized by ARMs and hybrid ARMs, with coupons linked to various indices. The following tables detail the characteristics of our ARMs and hybrid ARMs portfolio by index as of March 31, 2011 and December 31, 2010 (dollars in thousands):

	As of March 31, 2011				As of December 31, 2010			
	Six-Month LIBOR	One-Year LIBOR	One-Year Treasury	Twelve-Month Treasury Average	Six-Month LIBOR	One-Year LIBOR	One-Year Treasury	Twelve-Month Treasury Average
Weighted average term to next reset (months)	42	76	45	33	39	75	48	35
Weighted average margin	1.59%	1.79%	2.08%	1.84%	1.53%	1.75%	2.14%	1.83%
Weighted average annual period cap	1.09%	2.00%	1.78%	1.00%	1.23%	2.00%	1.86%	1.00%
Weighted average lifetime cap	10.60%	9.32%	10.23%	10.12%	10.86%	9.88%	10.28%	10.13%
Principal amount	\$ 106,922	\$3,847,101	\$ 490,455	\$ 253,371	\$ 141,318	\$2,683,203	\$ 659,825	\$ 261,017
Percentage of investment portfolio at par value	0%	14%	2%	1%	1%	21%	5%	2%

The following table details the number of months to the next reset for our pass-through securities collateralized by ARMs and hybrid ARMs as of March 31, 2011 and December 31, 2010 (dollars in thousands):

	As of March 31, 2011			As of December 31, 2010		
	Fair Value	% Total	Average Reset	Fair Value	% Total	Average Reset
Less than one year	\$ 16,790	1%	6	\$ 25,803	1%	7
Greater than or equal to one year and less than two years	109,827	2%	20	218,928	5%	18
Greater than or equal to two years and less than three years	710,723	14%	31	737,130	19%	33
Greater than or equal to three years and less than five years	933,838	19%	45	1,010,349	26%	47
Greater than or equal to five years	3,144,816	64%	87	1,957,954	49%	94
Total / Weighted Average	<u>\$4,915,994</u>	<u>100%</u>	<u>69</u>	<u>\$3,950,164</u>	<u>100%</u>	<u>66</u>

Actual maturities of agency securities are generally shorter than stated contractual maturities primarily as a result of prepayments of principal of the underlying mortgages. The stated contractual final maturity of the mortgage loans underlying our portfolio of agency securities ranges up to 40 years, but the expected maturity is subject to change based on the actual and expected future prepayments of the underlying loans. As of March 31, 2011 and December 31, 2010, the average final contractual maturity of the agency securities in our investment portfolio was 22 years. The estimated weighted average months to maturity of the agency securities in the table below are based upon our prepayment expectations, which are estimated based on assumptions for different securities using a combination of third-party services, market data and internal models. The third-party services estimate prepayment speeds using models that incorporate the forward yield curve, mortgage rates, current mortgage rates of the outstanding loans, loan age, volatility and other factors. As market conditions are changing rapidly, we use judgment in making adjustments to our models for some products. Various market participants could use materially different assumptions.

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The following table summarizes our agency securities classified as available-for-sale, at fair value, according to their estimated weighted average life classifications as of March 31, 2011 and December 31, 2010 (in thousands):

Weighted Average Life	As of March 31, 2011			As of December 31, 2010		
	Fair Value	Amortized Cost	Weighted Average Coupon	Fair Value	Amortized Cost	Weighted Average Coupon
Less than or equal to one year	\$ 4,243	\$ 4,296	4.39%	\$ —	\$ —	—
Greater than one year and less than or equal to three years	103,442	102,369	4.97%	133,123	132,520	5.05%
Greater than three years and less than or equal to five years	7,254,072	7,224,166	4.70%	3,821,992	3,821,992	4.92%
Greater than five years	20,720,467	20,819,144	4.30%	9,479,136	9,526,981	4.31%
Total	<u>\$28,082,224</u>	<u>\$20,149,975</u>	<u>4.40%</u>	<u>\$13,453,541</u>	<u>\$13,481,492</u>	<u>4.49%</u>

The weighted average life of our interest-only securities was 6.5 and 6.2 years as of March 31, 2011 and December 31, 2010, respectively.

The constant prepayment rate (“CPR”) reflects the percentage of principal that is prepaid over a period of time on an annualized basis. In general, while there are various factors that impact the rate of prepayments, as interest rates rise, the rate of refinancings typically declines, which may result in lower rates of prepayment and, as a result, a lower portfolio CPR. Conversely, as interest rates fall, the rate of refinancings typically increases, which may result in higher rates of prepayment and, as a result, a higher portfolio CPR. As of March 31, 2011, our portfolio was purchased at a net premium.

In determining the estimated weighted average months to maturity of our agency securities and the yield on our agency securities, we have assumed that the CPR over the remaining projected life of our aggregate investment portfolio is 10% as of March 31, 2011. We make different prepayment assumptions for the individual securities that comprise the investment portfolio and these individual assumptions can differ materially from the average. There is also considerable uncertainty around prepayment speeds in this environment and actual speeds could differ materially from our estimates. Furthermore, GSE buyouts of loans in imminent risk of default, loans that have been modified, or loans that have defaulted will generally be reflected as prepayments on agency securities and also increase the uncertainty around these estimates. In addition, securities were purchased with different amounts of premiums and therefore the yield on some securities is more sensitive to changes in prepayment speeds.

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**RESULTS OF OPERATIONS**

The following analysis of our financial condition and results of operations should be read in conjunction with our interim consolidated financial statements and the notes thereto. The table below presents our condensed consolidated statements of operations and key statistics as of March 31, 2011 and December 31, 2010 and for the three months ended March 31, 2011 and 2010 (in thousands, except per share amounts):

	As of	
	March 31, 2011	December 31, 2010
<b>Balance Sheet Data:</b>		
Investment portfolio, at fair value	\$28,192,575	\$ 13,510,280
Total assets	\$29,154,963	\$ 14,475,829
Repurchase agreements and other debt	\$22,061,884	\$ 11,753,019
Total liabilities	\$25,810,462	\$ 12,903,765
Total stockholders' equity	\$ 3,344,501	\$ 1,572,064
Net asset value per common share as of period end(1)	\$ 25.96	\$ 24.24
	<b>For the three months ended March 31,</b>	
	<b>2011</b>	<b>2010</b>
<b>Consolidated Statement of Operations Data:</b>		
Interest income	\$ 164,493	\$ 38,797
Interest expense	35,648	15,510
Net interest income	128,845	23,287
Gain from sale of agency securities, net	4,220	27,408
Gain from derivative instruments and trading securities, net	11,529	5,920
Total other income, net	15,749	33,328
Management fees	8,454	1,784
General and administrative expenses	2,597	1,681
Total expenses	11,051	3,465
Net income	\$ 133,543	\$ 53,150
Net income per common share—basic and diluted	\$ 1.48	\$ 2.13
Weighted average number of common shares outstanding—basic and diluted	90,304	25,002
Dividends declared per common share	\$ 1.40	\$ 1.40
	<b>For the three months ended March 31,</b>	
	<b>2011</b>	<b>2010</b>
<b>Other Data:</b>		
Average agency securities, at cost	\$19,361,473	\$ 4,099,855
Average agency securities, at cost—percent of par value	104.4%	104.9%
Average total assets, at fair value	\$20,472,785	\$ 4,591,850
Average repurchase agreements and other debt	\$17,755,790	\$ 3,787,583
Average stockholders' equity	\$ 2,411,628	\$ 580,056
Average coupon(2)	4.58%	5.17%
Average asset yield(3)	3.39%	3.78%
Average cost of funds(4)	0.81%	1.23%
Average cost of funds—terminated swap amortization expense(5)	—	0.39%
Average net interest rate spread(6)	2.58%	2.16%
Average actual CPR for securities held during the period	13%	21%
Average forecasted CPR as of period end	10%	18%
Leverage ( <i>average during the period</i> )(7)	7.4:1	6.5:1
Leverage ( <i>as of period end</i> )(8)	7.6:1	7.9:1
Annualized expenses % of average assets(9)	0.22%	0.31%
Annualized expenses % of average equity(10)	1.86%	2.42%
Net return on average stockholders' equity(11)	22.5%	37.2%
Annualized economic return(12)	52.2%	33.0%

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- \* Average numbers for each period are weighted based on days on our books and records, all percentages are annualized.
- (1) Net asset value per common share was calculated by dividing our total stockholders' equity by our number of shares outstanding.
  - (2) Weighted average coupon for the period was calculated by dividing our total coupon (or cash) interest income on our agency securities by our weighted average agency securities.
  - (3) Weighted average asset yield for the period was calculated by dividing our total interest income on our agency securities, including amortization of premiums and discounts, by our weighted average agency securities.
  - (4) Weighted average cost of funds for the period was calculated by dividing our total interest expense by our weighted average repurchase agreements and other debt. Total interest expense excludes amortization expense related to the costs of the previously terminated interest rate swaps during the periods presented.
  - (5) Represents amortization expense associated with the termination of interest rate swaps of \$— million and \$3.7 million for the three months ended March 31, 2011 and 2010, respectively.
  - (6) Average net interest rate spread for the period was calculated by subtracting our weighted average cost of funds, net of interest rate swaps and terminated swap amortization expense, from our weighted average asset yield.
  - (7) Leverage during the period was calculated by dividing our average repurchase agreements and other debt outstanding by our average stockholders' equity.
  - (8) Leverage at period end was calculated by dividing the sum of the amount outstanding under our repurchase agreements, net receivable/payable for unsettled agency securities and other debt by our total stockholders' equity at period end.
  - (9) Annualized expenses as a percentage of average total assets was calculated by dividing our total expenses by our average total assets on an annualized basis.
  - (10) Annualized expenses as a percentage of average stockholders' equity was calculated by dividing our total expenses by our average stockholders' equity on an annualized basis.
  - (11) Annualized net return on average stockholders' equity for the period was calculated by dividing our net income by our average stockholders' equity on an annualized basis.
  - (12) Annualized economic return represents the sum of the change in net asset value over the period and dividends declared during the period over the beginning net asset value on an annualized basis.

### ***Interest Income and Asset Yield***

Interest income was \$164.5 million and \$38.8 million for the current and prior year quarters, respectively. The increase was due to an increase in our average investment portfolio, partially offset by a decline in our average asset yield.

Our average asset yield declined to 3.39% for the current quarter from 3.78% for the prior year quarter as a result of acquiring lower yielding securities due to changes in our portfolio composition and increase in the size of our average investment portfolio during a period of lower interest rates than of the prior year. The average coupon of our investment portfolio declined to 4.58% for the current quarter from 5.17% for the prior year quarter and the average amortized cost basis of our investment portfolio decreased to 104.4% from 104.9%, respectively.

We amortize premiums and discounts associated with agency securities into interest income over the life of such securities using the effective yield method. The effective yield (or asset yield) on our agency securities is based on actual CPRs realized for individual securities in our investment portfolio through the reporting date and assumes a CPR over the remaining projected life of our aggregate investment portfolio of 10% and 18% as of March 31, 2011 and 2010, respectively. The actual CPR realized for individual securities in our investment portfolio was approximately 13% and 21% for the current and prior year quarters, respectively. In addition, pursuant to ASC 310-20, the yield on our adjustable rate securities assumes that the securities reset at a rate equal to the underlying index rate in effect as of the date we acquired the security plus the stated margin. Consequently, future reset rate assumptions incorporated in our asset yields may differ materially from future reset rates implied by the forward yield curve and the actual reset rates ultimately achieved. Further, notwithstanding changes to our actual and projected CPR assumptions, the lower our reset rate assumption is pursuant to ASC 310-20 than the current fixed rate in effect, the greater the rate of premium amortization we will recognize over the initial fixed rate period.

Our adjustable rate portfolio was acquired for a premium above par value and most securities were acquired during a period of historically low index rates. Accordingly, the majority of the premium balance on our adjustable rate securities will be amortized prior to their first reset date, regardless of actual or forecasted

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prepayment speeds and changes in the underlying index rates prior to actual reset. Adjustable rate securities acquired during a different interest rate environment may experience a different premium amortization pattern even as current index rates remain near their historical lows. For adjustable rate securities held as of March 31, 2011, the weighted average coupon rate was 4.45%, the weighted average months to reset was 69 months and the weighted average reset rate assumption was 2.73%, which is based on a weighted average underlying index rate of 0.91% as of the date we acquired the securities and a weighted average margin of 1.82%.

Interest income for the current and prior year quarters is net of \$48.0 million and \$12.3 million, respectively, for net amortization of premiums and discounts on our investment portfolio. The unamortized premium balance of our aggregate investment portfolio, including the unamortized cost basis of our interest-only securities and net of discounts, was \$1.2 billion and \$626.3 million as of March 31, 2011 and December 31, 2010, respectively.

### **Leverage**

Our leverage as of March 31, 2011 and December 31, 2010 was 6.6 and 7.5 times, respectively, our stockholders' equity. When adjusted for the net payable for agency securities purchased but not yet settled, our leverage ratio was 7.6 and 7.8 times our stockholders' equity as of March 31, 2011 and December 31, 2010, respectively. Our actual leverage will vary from time to time based on various factors, including our Manager's opinion of the level of risk of our assets and liabilities, our liquidity position, our level of unused borrowing capacity, over-collateralization levels required by lenders when we pledge agency securities to secure our borrowings and the current market value of our investment portfolio. In addition, certain of our master repurchase agreements and master swap agreements contain a restriction that prohibits our leverage from exceeding levels ranging from 12 to 16 times the amount of our stockholders' equity.

The table below presents our quarterly average and quarter end repurchase agreement and other debt balances outstanding and average leverage ratios for the three quarters ended March 31, 2011 and 2010 and December 31, 2010 (dollars in thousands):

<u>Quarter Ended</u>	<u>Repurchase Agreements and Other Debt</u>			<u>Average Daily Interest Rate on Amounts Outstanding</u>	<u>Average Interest Rate on Ending Amount Outstanding</u>	<u>Average Leverage(1)</u>	<u>Leverage as of Period End(2)</u>	<u>Leverage as of Period End, Net of Unsettled Trades(3)</u>
	<u>Average Daily Amount Outstanding</u>	<u>Maximum Daily Amount Outstanding</u>	<u>Ending Amount Outstanding</u>					
	March 31, 2010	\$ 3,787,583	\$ 4,651,115					
December 31, 2010(4)	\$ 10,813,568	\$ 12,340,635	\$ 11,753,019	0.29%	0.31%	8.4:1	7.5:1	7.8:1
March 31, 2011(5)	\$ 17,755,790	\$ 22,147,273	\$ 22,061,884	0.28%	0.28%	7.4:1	6.6:1	7.6:1

(1) Average leverage during the period was calculated by dividing our average repurchase agreements and other debt outstanding for the period by our average stockholders' equity for the period.

(2) Leverage as of period end was calculated by dividing the amount outstanding under our repurchase agreements and other debt by our stockholders' equity at period end.

(3) Leverage as of period end, net of unsettled trades was calculated by dividing the sum of the amount outstanding under our repurchase agreements, net liabilities and receivables for unsettled agency securities and other debt by our total stockholders' equity at period end.

(4) Our leverage as of December 31, 2010, net of unsettled trades, of 7.8 times our stockholders' equity was less than our average leverage for the quarter ended December 31, 2010 because we had not fully invested the net proceeds raised from our December 2010 follow-on equity offering as of the end of the year.

(5) Our leverage as of March 31, 2011, of 6.6 times our stockholders' equity was less than our average leverage for the quarter ended March 31, 2011 because we had not fully invested the net proceeds raised from our March 2011 follow-on equity offering as of the end of the quarter.

### **Interest Expense and Cost of Funds**

Interest expense was \$35.6 million and \$15.5 million for the current and prior year quarters, respectively. The increase in interest expense was due to an increase in our average repurchase agreement and other debt

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balance outstanding, partially offset by a decline in swap interest expense due to a lower ratio of swaps in effect relative to our average repurchase agreement and other debt balance outstanding and a reduction of swap interest expense of \$3.7 million for terminated swap amortization expense recorded during the prior year quarter.

For the current and prior year quarters, our average repurchase agreement and other debt balance outstanding was \$17.8 billion and \$3.8 billion, respectively. The quarterly year over year increase was primarily driven by deploying new equity capital raised during the current period on a levered basis. The average interest rate on our repurchase agreements and other debt increased to 0.28% for the current quarter from 0.22% for the prior year quarter, primarily driven by an increase in the one month LIBOR interest rate. Including the net impact of interest rate swaps, the total quarter average cost of funds declined year over year to 0.81% from 1.62% (or from 1.23% when excluding amortization expense associated with previously terminated interest rate swaps), respectively.

For the current quarter, our interest rate swaps designated as cash flow hedges under ASC 815 increased the cost of our borrowings by \$23.2 million, or 0.53% of interest bearing liabilities. For the prior year quarter, our designated interest rate swaps increased the cost of our borrowings by \$13.4 million, or 1.40% of interest bearing liabilities (or \$9.8 million and 1.01%, respectively, excluding terminated swap amortization expense). For the current and prior year quarters, we had average notional amounts outstanding under interest rate swap agreements designated as cash flow hedges of \$6.6 billion and \$2.2 billion, excluding forward starting interest rate swaps, respectively, or 37% and 58% of our average repurchase agreement and other debt balance, respectively.

### ***Net Interest Income and Net Interest Rate Spread***

Net interest income, which equals interest income less interest expense, was \$128.8 million and \$23.3 million for current and prior year quarters, respectively. The average net interest rate spread, which equals the average yield on our assets for the period less the average cost of funds for current and prior year quarter, was 2.58% and 2.16% (or 2.55% excluding terminated swap amortization expense), respectively. As of March 31, 2011, our weighted average asset yield was 3.47%, our weighted average cost of funds was 1.05% and our net interest rate spread was 2.42%.

Our weighted average cost of funds as of March 31, 2011 is based on our total repurchase agreement and other debt balance outstanding, plus the net payable for unsettled trades, (altogether totaling \$25.3 billion), a weighted average interest rate on our repurchase agreements of 0.28%, and an interest rate swap balance of \$13.1 billion notional and an average pay rate of 1.74% (or 1.49% net of the receive rate). The interest rate swap balance includes interest rate swaps designated as cash flow hedges in effect as of March 31, 2011 totaling \$9.4 billion, plus \$3.7 billion of forward starting swaps starting within three months of March 31, 2011, net of interest rate swap expirations.

As of March 31, 2011, we had \$5.6 billion of forward starting interest rate swaps with forward start dates ranging from one to nine months from March 31, 2011. We enter into forward starting interest rate swaps based on a variety of factors, including our Manager's view of the forward yield curve and the timing of potential changes in short-term interest rates, time to deploy new capital, amount and timing of expirations of our existing interest swap portfolio and current and anticipated swap spreads.

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**Gain on Sale of Agency Securities, Net**

The following table is a summary of our net gain on sale of agency securities for the current and prior year quarters (in thousands):

	Three Months Ended	
	March 31, 2011	March 31, 2010
Agency securities sold, at cost	\$(1,935,457)	\$(2,117,510)
Proceeds from agency securities sold	1,939,677	2,144,918
Net gains on sale of agency securities	<u>\$ 4,220</u>	<u>\$ 27,408</u>
Gross gains on sale of agency securities	\$ 18,955	\$ 30,054
Gross losses on sale of agency securities	(14,735)	(2,646)
Net gains on sale of agency securities	<u>\$ 4,220</u>	<u>\$ 27,408</u>

Sales of securities are driven by our Manager's execution of our active portfolio management strategy. Our strategy for the periods presented was largely focused on repositioning our portfolio towards securities with attributes our Manager believes reduce the level of prepayment risk and overall exposure to interest rate risk in light of current and anticipated interest rates, federal government programs, general economic conditions and other factors. The decrease in the amount of agency securities sold quarter over quarter was, in particular, due to a large number of securities sales during the first quarter of 2010 driven by the anticipated GSE buyouts of built up delinquent mortgage loans from their outstanding mortgage pools.

**Gain on Derivative Instruments and Trading Securities, Net**

The following table is a summary of our gain on derivative instruments and trading securities, net for current and prior year quarters (in thousands):

	For the three months ended March 31,	
	2011	2010
Realized gain (loss) from derivative instruments and trading securities:		
TBAs and forward settling agency securities	\$ 25,450	\$ 2,447
Interest rate swaptions	6,212	(243)
Interest rate swaps not designated as hedges under ASC 815	(4,386)	(830)
U.S. treasury securities	564	—
Short sales of U.S. treasury securities	191	—
Markit IOS Index total return swaps	1,800	—
Put options	1,133	—
Total realized gain (loss) from derivative instruments and trading securities, net	<u>30,964</u>	<u>1,374</u>
Unrealized gain (loss) from derivative instruments and trading securities:(1)		
TBAs and forward settling agency securities	(22,382)	4,536
Interest-only securities	2,681	2,088
Interest rate swaptions	(11,615)	(1,924)
Interest rate swaps not designated as hedges under ASC 815	3,578	—
Short sales of U.S. treasury securities	679	—
Put options	—	37
Markit IOS Index total return swaps	7,756	—
Hedge ineffectiveness on interest rate swaps accounted for as hedges under ASC 815	(132)	(191)
Total unrealized gain from derivative instruments and trading securities, net	<u>(19,435)</u>	<u>4,546</u>
Total gain (loss) from derivative instruments and trading securities, net	<u>\$ 11,529</u>	<u>\$ 5,920</u>

(1) Unrealized gain (loss) from derivatives and trading securities includes reversals of prior period amounts for settled or expired derivatives and trading securities.

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The increase in the net quarter gains from derivatives and trading securities year over year is due to an increase in the size our investment portfolio coupled with an increase in the use of other supplemental hedging strategies entered into to manage the potential adverse impact of short term changes in interest rates on the value of our investments and our cash flows. Net gains from derivatives and trading securities for the current quarter benefited from an increase in interest rates during the quarter.

For further details regarding our derivatives and related hedging activity please refer to Notes 3 and 6 to our consolidated financial statements in this Quarterly Report on Form 10-Q.

### ***Management Fees and General and Administrative Expenses***

We pay our Manager a base management fee payable monthly in arrears in amount equal to one twelfth of 1.25% of our Equity. Our Equity is defined as our month-end stockholders' equity, adjusted to exclude the effect of any unrealized gains or losses included in either retained earnings or OCI, each as computed in accordance with GAAP. There is no incentive compensation payable to our Manager pursuant to the management agreement. We incurred management fees of \$8.4 million and \$1.8 million for the current and prior year quarters, respectively. General and administrative expenses were \$2.6 million and \$1.7 million for the current and prior year quarters, respectively. Our general and administrative expenses primarily consisted of the allocation of overhead expenses from our Manager, information technology costs, prime brokerage fees, accounting fees, legal fees, Board of Director fees and insurance expenses. Our total quarter's management fee and general and administrative expenses as a percentage of our average stockholders' equity declined year over year to 1.86% from 2.42% due to improved operating leverage.

### ***Net Income and Net Return on Equity***

Net income was \$133.5 million, or \$1.48 per basic and diluted share, and \$53.2 million, or \$2.13 per basic and diluted share, for the current and prior year quarters, respectively. For the current quarter, the annualized net return on average equity was 22.5%, or 19.8% excluding other income, net compared to an annualized net return on average equity of 37.2%, or 13.9% excluding other income, net for the prior year quarter.

### ***Dividends***

For the first quarters 2011 and 2010, we declared dividends of \$1.40 per share for each quarter. As a REIT, we are required to distribute annually 90% of our taxable income to maintain our status as a REIT and all of our taxable income to avoid Federal, state and local corporate income taxes. We can treat dividends declared by September 15 and paid by December 31 as having been a distribution of our taxable income for our prior tax year. As of March 31, 2011, we have declared or paid all of our taxable income for the 2010 tax year and we have an estimated \$55 million of undistributed taxable income related to our 2011 tax year, net of the March 31, 2011 dividend payable of \$135.3 million. Income as determined under GAAP differs from income as determined under tax rules because of both temporary and permanent differences in income and expense recognition. Examples include temporary differences related to unrealized gains and losses on derivative instruments and trading securities that are recognized in income for GAAP but are excluded from taxable income until realized or settled, temporary differences in the CPR used to amortize premiums or accrete discounts, temporary differences related to timing of the recognition of hedge ineffectiveness, permanent and temporary differences related to the timing and amount recognized for stock-based compensation and permanent differences for excise tax expense.

## **LIQUIDITY AND CAPITAL RESOURCES**

Our primary sources of funds are borrowings under master repurchase agreements, equity offerings, asset sales and monthly principal and interest payments on our investment portfolio. Because the level of our borrowings can be adjusted on a daily basis, the level of cash and cash equivalents carried on the balance sheet is significantly less important than the potential liquidity available under our borrowing arrangements. We currently



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believe that we have sufficient liquidity and capital resources available for the acquisition of additional investments, repayments on borrowings, maintenance of any margin requirements and the payment of cash dividends as required for our continued qualification as a REIT. To qualify as a REIT, we must distribute annually at least 90% of our taxable income. To the extent that we annually distribute all of our taxable income in a timely manner, we will generally not be subject to federal and state income taxes. We currently expect to distribute all of our taxable income. This distribution requirement limits our ability to retain earnings and thereby replenish or increase capital from operations.

### **Equity Capital Raising Activities**

To the extent we raise additional equity capital through follow-on equity offerings, through our Controlled Equity Offering<sup>SM</sup> program or under our dividend reinvestment and direct stock purchase plan, we currently anticipate using cash proceeds from such transactions to purchase additional agency securities, to make scheduled payments of principal and interest on our repurchase agreements and for other general corporate purposes. There can be no assurance, however, that we will be able to raise additional equity capital at any particular time or on any particular terms.

### **Equity Offerings**

During the three months ended March 31, 2011, we completed two follow-on public offerings of shares of our common stock summarized in the table below (in thousands, except per share amounts):

	<u>Public Offering</u>	<u>For the three Months Ended March 31, 2011</u>		
		<u>Public Offering Price per Share(1)</u>	<u>Shares</u>	<u>Net Proceeds(2)</u>
January 2011		\$ 28.00	26,910	\$ 719,310
March 2011		\$ 27.72	32,200	892,434
<b>Total</b>			<u>59,110</u>	<u>\$ 1,611,744</u>

(1) Public offering price per share is gross of underwriters' discount, if applicable

(2) Proceeds received, net of the underwriters' discount, if applicable, and other offering costs

### **Controlled Equity Offering<sup>SM</sup> Program**

We have a sales agreement with an underwriter to, from time to time, publicly offer and sell up to 15 million shares of our common stock in privately negotiated and/or at-the-market transactions. During the three months ended March 31, 2011, we sold 4.3 million shares of our common stock under the sales agreement at an average offering price of \$29.41 per share for proceeds, net of the underwriter's discount and other program costs, of \$126.1 million. As of March 31, 2011, 6.3 million shares of common stock remain under the sales agreement.

### **Dividend Reinvestment and Direct Stock Purchase Plan**

We sponsor a dividend reinvestment and direct stock purchase plan through which stockholders may purchase additional shares of our common stock by reinvesting some or all of the cash dividends received on shares of our common stock. Stockholders may also make optional cash purchases of shares of our common stock subject to certain limitations detailed in the plan prospectus. During the three months ended March 31, 2011, we issued 0.5 million shares under the plan for net cash proceeds of \$14.9 million. As of March 31, 2011, there were 4.7 million shares available for issuance under the plan.

### **Debt Capital**

As part of our investment strategy, we borrow against our investment portfolio pursuant to master repurchase agreements. We expect that our borrowings pursuant to repurchase transactions under such master repurchase agreements generally will have maturities that range from 30 to 90 days, but may have maturities of

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less than 30 days or up to 364 days. When adjusted for net payables and receivables for agency securities purchased but not yet settled and other debt, our leverage ratio was 7.6 times the amount of our stockholders' equity as of March 31, 2011. Our cost of borrowings under master repurchase agreements generally corresponds to LIBOR plus or minus a margin. We have master repurchase agreements with 25 financial institutions, subject to certain conditions. As of March 31, 2011, borrowings under repurchase arrangements secured by agency securities totaled \$22.0 billion, other debt associated with a structured transaction accounted for as a financing transaction totaled \$0.1 billion and net payables for agency securities not yet settled was \$3.2 billion. As of March 31, 2011, we did not have an amount at risk with any counterparty greater than 10% of our stockholders' equity. Refer to Note 5 to our consolidated financial statements in this Quarterly Report on Form 10-Q for further details regarding our borrowings under repurchase agreements and other debt and weighted average interest rates as of March 31, 2011.

Amounts available to be borrowed under our repurchase agreements are dependent upon lender collateral requirements and the lender's determination of the fair value of the securities pledged as collateral, which fluctuates with changes in interest rates, credit quality and liquidity conditions within the investment banking, mortgage finance and real estate industries. Under the repurchase agreements, we may be required to pledge additional assets to the repurchase agreement counterparties (i.e., lenders) in the event the estimated fair value of the existing pledged collateral under such agreements declines and such lenders demand additional collateral (a margin call), which may take the form of additional securities or cash. Similarly, if the estimated fair value of investment securities increases due to changes in the market interest rates, lenders may release collateral back to us. Specifically, margin calls would result from a decline in the value of the agency securities securing our repurchase agreements and prepayments on the mortgages securing such agency securities. As of March 31, 2011, we have met all margin requirements. We had unrestricted cash and cash equivalents of \$300.6 million and unpledged agency securities of \$1.5 billion, excluding net unsettled purchases and sales of agency securities, available to meet margin calls on our repurchase agreements and derivative instruments as of March 31, 2011.

Although we believe that we will have adequate sources of liquidity available to us through repurchase agreement financing to execute our business strategy, there can be no assurances that repurchase agreement financing will be available to us upon the maturity of our current repurchase agreements to allow us to renew or replace our repurchase agreement financing on favorable terms or at all. If our repurchase agreement lenders default on their obligations to resell the underlying agency securities back to us at the end of the term, we could incur a loss equal to the difference between the value of the agency securities and the cash we originally received.

We maintain an interest rate risk management strategy under which we use derivative financial instruments to manage the adverse impact of interest rates changes on the value of our investment portfolio as well as our cash flows. In particular, we attempt to mitigate the risk of the cost of our short-term variable rate liabilities increasing at a faster rate than the earnings of our long-term assets during a period of rising interest rates. The principal derivative instruments that we use are interest rate swaps, supplemented with the use of interest rate swaptions, TBA agency securities, options, futures and other instruments.

We use interest rate swap agreements to effectively lock in fixed rates on a portion of our short-term borrowings because longer-term committed borrowings are not available at attractive terms. We have entered into interest rate swap agreements to attempt to mitigate the risk of the cost of our short-term variable rate liabilities rising during a period of rising interest rates, thereby compressing the net spreads that we earn on our long-term fixed-rate assets. As of March 31, 2011, we had interest rate swap agreements that were designated as cash flow hedges for accounting purposes of a like amount of our short-term borrowings. Refer to Note 6 to our consolidated financial statements in this Quarterly Report on Form 10-Q for further details regarding our outstanding interest rate swaps as of March 31, 2011 and the related activity for the first quarter 2011.

### ***Off-Balance Sheet Arrangements***

As of March 31, 2011, we did not maintain any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance, or special purpose or variable interest

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entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, as of March 31, 2011, we had not guaranteed any obligations of unconsolidated entities or entered into any commitment or intent to provide funding to any such entities.

### **FORWARD-LOOKING STATEMENTS**

This document contains “forward-looking statements” (within the meaning of the Private Securities Litigation Reform Act of 1995) that inherently involve risks and uncertainties. Our actual results and liquidity can differ materially from those anticipated in these forward-looking statements because of changes in the level and composition of our investments and other factors. These factors may include, but are not limited to, changes in general economic conditions, the availability of suitable investments from both an investment return and regulatory perspective, the availability of new investment capital, fluctuations in interest rates and levels of mortgage prepayments, deterioration in credit quality and ratings, the effectiveness of risk management strategies, the impact of leverage, liquidity of secondary markets and credit markets, increases in costs and other general competitive factors.

#### **Item 3. *Quantitative and Qualitative Disclosures About Market Risk***

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. The primary market risks that we are exposed to are interest rate risk, prepayment risk, spread risk, liquidity risk, extension risk and inflation risk.

##### ***Interest Rate Risk***

Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control.

Changes in the general level of interest rates can affect our net interest income, which is the difference between the interest income earned on interest-earning assets and the interest expense incurred in connection with our interest-bearing liabilities, by affecting the spread between our interest-earning assets and interest bearing liabilities. Changes in the level of interest rates can also affect the rate of prepayments of our securities and the value of the agency securities that constitute our investment portfolio, which affects our ability to realize gains from the sale of these assets and impacts our ability and the amount that we can borrow against these securities.

We may utilize a variety of financial instruments in order to limit the effects of changes in interest rates on our operations, including interest rate swap agreements, interest rate swaptions, interest rate cap or floor contracts and futures or forward contracts. We may also purchase or short TBA and U.S. Treasury securities, purchase or write put or call options on TBA securities or we may invest in other types of mortgage derivative securities, such as interest-only securities, and synthetic total return swaps, such as the Markit IOS Index. When we use these types of derivatives to hedge the risk of interest-earning assets or interest-bearing liabilities, we may be subject to certain risks, including the risk that losses on a hedge position will reduce the funds available for payments to holders of our common stock and that the losses may exceed the amount we invested in the instruments.

Our profitability and the value of our investment portfolio (including derivatives used for hedging purposes) may be adversely affected during any period as a result of changing interest rates including resulting changes in forward yield curves. The following table quantifies the estimated changes in net interest income and investment portfolio value should interest rates go up or down by 50 and 100 basis points, assuming the yield curves of the rate shocks will be parallel to each other and the current yield curve. These estimates were compiled using a combination of third-party services, market data and internal models. All changes in income and value are measured as percentage changes from the projected net interest income and investment portfolio value at the base

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interest rate scenario. The base interest rate scenario assumes interest rates as of March 31, 2011. Given the low level of interest rates, we also apply a floor of 0% for all anticipated interest rates included in our assumptions, such that any hypothetical interest rate decrease would have a limited positive impact on our funding costs beyond a certain level. However, because estimated prepayment speeds are unaffected by this floor, it is expected that an increase in our prepayment speeds as a result of a hypothetical interest rate decrease would result in an acceleration of our premium amortization and could result in reinvestment of such prepaid principal into lower yielding assets.

Actual results could differ materially from estimates, especially in the current market environment. The accuracy of the projected agency securities prices relies on assumptions that define specific agency securities spreads and varying prepayment assumptions at projected interest rate levels. To the extent that these estimates or other assumptions do not hold true, which is likely in a period of high price volatility, actual results will likely differ materially from projections and could be larger or smaller than the estimates in the table below. Moreover, if different models were employed in the analysis, materially different projections could result. In addition, while the tables below reflect the estimated impact of interest rate increases and decreases on a static portfolio, we may from time to time sell any of our agency securities as a part of our overall management of our investment portfolio.

<u>Change in Interest Rate</u>	<u>Percentage Change in Projected Net Interest Income</u>	<u>Percentage Change in Projected Portfolio Value, with Effect of Derivatives</u>
+100 Basis Points	-5.1%	-1.1%
+50 Basis Points	-1.7%	-0.4%
-50 Basis Points	-3.5%	0.1%
-100 Basis Points	-16.7%	-0.3%

### ***Prepayment Risk***

Premiums and discounts associated with the purchase of agency securities are amortized or accreted into interest income over the projected lives of the securities, including contractual payments and estimated prepayments using the interest method. Furthermore, U.S. Government agency or U.S. Government entity buyouts of loans in imminent risk of default, loans that have been modified, or loans that have defaulted will generally be reflected as prepayments on agency securities and also increase the uncertainty around these estimates. Our policy for estimating prepayment speeds for calculating the effective yield is to evaluate published prepayment data for similar agency securities, market consensus and current market conditions. If the actual prepayment experienced differs from our estimate of prepayments, we will be required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.

### ***Spread Risk***

Our available-for-sale securities are reflected at their estimated fair value with unrealized gains and losses excluded from earnings and reported in OCI pursuant to ASC 320. As of March 31, 2011, the fair value of these securities was \$28.1 billion. When the spread between the yield on our agency securities and U.S. treasury securities or swap rates widens, this could cause the value of our agency securities to decline, creating what we refer to as spread risk. The spread risk associated with our agency securities and the resulting fluctuations in fair value of these securities can occur independent of interest rates and may relate to other factors impacting the mortgage and fixed income markets such as liquidity or changes in required rates of return on different assets.

### ***Liquidity Risk***

The primary liquidity risk for us arises from financing long-term assets with shorter-term borrowings in the form of repurchase agreements. Our assets that are pledged to secure repurchase agreements are high-quality agency securities and cash. As of March 31, 2011, we had unrestricted cash and cash equivalents of

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\$300.6 million and unpledged agency securities of \$4.9 billion available to meet margin calls on our repurchase agreements, derivative instruments and for other corporate purposes. However, should the value of our agency securities pledged as collateral suddenly decrease, margin calls relating to our repurchase agreements could increase, causing an adverse change in our liquidity position. As such, we cannot assure that we will always be able to renew (or roll) our repurchase agreements. In addition, our counterparties have the option to increase our haircuts (margin requirements) on the assets we pledge against repurchase agreements, thereby reducing the amount that can be borrowed against an asset even if they agree to renew or roll the repurchase agreement. Significantly higher haircuts can reduce our ability to leverage our portfolio or even force us to sell assets, especially if correlated with asset price declines or faster prepayment rates on our assets.

### ***Extension Risk***

The projected weighted-average life and the duration (or interest rate sensitivity) of our investments is based on our Manager's assumptions regarding the rate at which the borrowers will prepay the underlying mortgage loans. In general, we use interest rate swaps and swaptions to help manage our funding cost on our investments in the event that interest rates rise. These swaps (or swaptions) allow us to reduce our funding exposure on the notional amount of the swap for a specified period of time by agreeing to pay a fixed-rate in exchange for receiving a floating rate that generally tracks our financing costs under our repurchase agreements.

However, if prepayment rates decrease in a rising interest rate environment, the average life or duration of our fixed-rate assets or the fixed-rate portion of the ARMs or other assets generally extends. This could have a negative impact on our results from operations, as our interest rate swap maturities are fixed and will, therefore, cover a smaller percentage of our funding exposure on our mortgage assets to the extent that their average lives increase due to slower prepayments. This situation may also cause the market value of our agency securities collateralized by fixed rate mortgages or hybrid ARMs to decline by more than otherwise would be the case while most of our hedging instruments (with the exception of short TBA mortgage positions, interest-only securities, Markit IOS Index total return swaps and certain other supplemental hedging instruments) would not receive any offsetting gains. In extreme situations, we may be forced to sell assets to maintain adequate liquidity, which could cause us to incur realized losses.

### ***Inflation Risk***

Virtually all of our assets and liabilities are interest rate sensitive in nature. As a result, interest rates and other factors influence our performance more so than does inflation. Changes in interest rates do not necessarily correlate with inflation rates or changes in inflation rates. Further, our consolidated financial statements are prepared in accordance with GAAP and our distributions are determined by our Board of Directors based primarily by our net income as calculated for income tax purposes. In each case, our activities and balance sheet are measured with reference to historical cost and/or fair market value without considering inflation.

## **Item 4. *Controls and Procedures***

### **Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Securities Exchange Act of 1934, as amended (the "Exchange Act") reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based on the definition of "disclosure controls and procedures" as promulgated under the Exchange Act and the rules and regulations thereunder. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

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We, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2011. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

### **Changes in Internal Controls over Financial Reporting**

There have been no changes in our “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that occurred during the quarter ended March 31, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II.—OTHER INFORMATION**

### **Item 1. Legal Proceedings**

From time to time, we may be involved in various claims and legal actions arising in the ordinary course of business. As of March 31, 2011, we have no legal proceedings.

### **Item 1A. Risk Factors**

There have been no material changes to the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2010, except as described below.

You should carefully consider the risks described below and all other information contained in this interim report on Form 10-Q, including our interim consolidated financial statements and the related notes thereto before making a decision to purchase our securities. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us, or not presently deemed material by us, may also impair our operations and performance.

If any of the following risks actually occur, our business, financial condition or results of operations could be materially adversely affected. If that happens, the trading price of our securities could decline, and you may lose all or part of your investment.

***We have no employees and our Manager is responsible for making all of our investment decisions. Certain of our Manager’s officers are employees of American Capital and are not required to devote any specific amount of time to our business and each of them may provide their services to American Capital, its affiliates and sponsored investment vehicles, which could result in conflicts of interest.***

Because we have no employees, our Manager is responsible for making all of our investment decisions. Certain of our and our Manager’s officers are employees of American Capital or its affiliates and these persons do not devote their time exclusively to us. Our Manager’s investment committee consists of Malon Wilkus, John R. Erickson, Samuel A. Flax and Thomas A. McHale, each of whom is an officer of American Capital and has significant responsibilities to American Capital and certain of its portfolio companies, affiliated entities or managed funds. Gary Kain is our President and Chief Investment Officer and also serves as the President and a member of our Manager, and he may have significant responsibilities for new funds that are managed by our Manager or affiliated entities of our Manager. Because certain of our and our Manager’s officers are also responsible for providing services to American Capital and/or certain of its portfolio companies, affiliated entities or managed funds, they may not devote sufficient time to the management of our business operations.

American Capital has agreed that so long as the Manager or an affiliate of American Capital continues to manage our company, it will not sponsor another investment vehicle that invests predominantly in whole pool agency securities. This restriction does not prevent American Capital or an affiliate of American Capital from

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investing in or sponsoring an investment vehicle that targets investments in agency securities so long as those investments are not predominately whole pool agency securities, and, as a result, American Capital or an affiliate of American Capital may compete with us. Our Manager has advised us that American Capital and its affiliates are currently pursuing opportunities to sponsor or invest in other investment vehicles, including investment vehicles that may make significant investments in agency securities, including whole pool agency securities. Our Manager and its employees are not restricted from participating in the management of such an entity.

Our Board of Directors has adopted investment guidelines that require that any investment transaction between us and American Capital or any affiliate of American Capital receive the prior approval of a majority of our independent directors. However, this policy does not eliminate the conflicts of interest that our and our Manager's officers will face in making investment decisions on behalf of American Capital, any other American Capital-sponsored investment vehicles and us. Further, we do not have any agreement or understanding with American Capital that would give us any priority over American Capital, any of its affiliates, or any such American Capital-sponsored investment vehicle in opportunities to invest in agency securities. Accordingly, we may compete for access to the benefits that we expect our relationship with our Manager and American Capital to provide.

### ***Federal Reserve programs to purchase securities could have an adverse impact on the agency securities in which we invest.***

Beginning in November 2008, the Federal Reserve initiated a program to purchase direct obligations of Fannie Mae, Freddie Mac and the Federal Home Loan Bank and agency securities backed by Fannie Mae, Freddie Mac and Ginnie Mae. In total, this program resulted in the Federal Reserve purchasing \$300 billion of direct obligations and \$1.75 trillion of agency securities with the purchase program ending in the first quarter of 2010. One of the effects of this program has been to increase competition for available direct obligations and agency securities, with the result being an increase in pricing of such securities. The Federal Reserve may hold the direct obligations and agency mortgage securities to maturity or may sell them on the open market. For instance, in March 2011, the U.S. Treasury announced plans to start selling its remaining \$142 billion of agency securities guaranteed by Fannie Mae or Freddie Mac. Sales by the Federal Reserve of the direct obligations or agency mortgage securities that it currently holds may reduce the market price of such securities. Reductions in the market price of agency mortgage securities may negatively impact our book value.

In addition, the Federal Reserve initiated a program in November 2010 to purchase up to \$600 billion of long-term U.S. Treasury securities by mid-2011 as part of its continuing effort to help stimulate the economy by reducing mortgage and interest rates. Such action could negatively affect our income or our net book value by impacting interest rate levels and the spread between mortgage rates and other interest rates. Thus, these actions could reduce the yields on assets that we are targeting for purchase, thereby reducing our net interest spreads. Alternatively, the Federal Reserve's actions may not have the intended impact and could create inflation and higher interest rates. This could negatively impact our net book value or our funding cost.

### ***The market price of our common stock may fluctuate significantly.***

The market price and marketability of shares of our securities may from time to time be significantly affected by numerous factors, including many over which we have no control and that may not be directly related to us. These factors include the following:

- price and volume fluctuations in the stock market from time to time, which are often unrelated to the operating performance of particular companies;
- significant volatility in the market price and trading volume of securities of REITs or other companies in our sector, which is not necessarily related to the operating performance of these companies;
- changes in regulatory policies, tax guidelines and financial accounting and reporting standards, particularly with respect to REITs;

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- actual or anticipated changes in our dividend policy and earnings or variations in operating results;
- any shortfall in revenue or net income or any increase in losses from levels expected by securities analysts;
- issuances of additional equity securities;
- additions or departures of key management personnel, or changes in our relationship with our Manager and American Capital;
- decreases in our net asset value per share;
- general economic trends and other external factors; and
- loss of major repurchase agreement providers.

Fluctuations in the trading price of our common stock may adversely affect the liquidity of the trading market for our common stock and, in the event that we seek to raise capital through future equity financings, our ability to raise such equity capital.

**Item 2.        *Unregistered Sales of Equity Securities and Use of Proceeds***

None.

**Item 3.        *Defaults Upon Senior Securities***

None.

**Item 4.        *Removed and Reserved***

**Item 5.        *Other Information***

None.



**INDEX TO EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>
*3.1	American Capital Agency Corp. Amended and Restated Certificate of Incorporation, incorporated herein by reference to Exhibit 3.1 of Form 10-Q for the quarter ended June 30, 2008 (File No. 001-34057), filed August 14, 2008.
*3.2	American Capital Agency Corp. Amended and Restated Bylaws, incorporated herein by reference to Exhibit 3.2 of Form 10-Q for the quarter ended June 30, 2008 (File No. 001-34057), filed August 14, 2008.
*4.1	Instruments defining the rights of holders of securities: See Article IV of our Amended and Restated Certificate of Incorporation, incorporated herein by reference to Exhibit 4.1 of Form 10-Q for the quarter ended June 30, 2008 (File No. 001-34057), filed August 14, 2008.
*4.2	Instruments defining the rights of holders of securities: See Article VI of our Amended and Restated Bylaws, incorporated herein by reference to Exhibit 4.2 of Form 10-Q for the quarter ended June 30, 2008 (File No. 001-34057), filed August 14, 2008.
*4.3	Form of Certificate for Common Stock, incorporated herein by reference to Exhibit 4.1 to Amendment No. 4 to the Registration Statement on Form S-11 (Registration No. 333-149167), filed May 9, 2008.
10.1	Underwriting Agreement, dated January 13, 2011, among American Capital Agency Corp., American Capital Agency Management, LLC, Merrill Lynch, Pierce, Fenner and Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC, as representatives of the several underwriters listed on Schedule I attached thereto, filed herewith.
10.2	Underwriting Agreement, dated March 21, 2011, among American Capital Agency Corp., American Capital Agency Management, LLC, Merrill Lynch, Pierce, Fenner and Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. Credit Suisse Securities (USA) LLC and Deutsche Bank Securities Inc., as representatives of the several underwriters listed on Schedule I attached thereto, filed herewith.
31.1	Certification of CEO Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
31.2	Certification of CFO Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
32	Certification of CEO and CFO Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Fully or partly previously filed

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AMERICAN CAPITAL AGENCY CORP.

Date: May 6, 2011

By: \_\_\_\_\_ /s/ MALON WILKUS  
**Malon Wilkus**  
**Chairman of the Board and**  
**Chief Executive Officer**

**UNDERWRITING AGREEMENT**

**AMERICAN CAPITAL AGENCY CORP.**

**(a Delaware corporation)**

**23,400,000 Shares of Common Stock**

**Dated: January 13, 2011**

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**AMERICAN CAPITAL AGENCY CORP.**

**(a Delaware corporation)**

**23,400,000 Shares of Common Stock**

**(Par Value \$0.01 Per Share)**

**UNDERWRITING AGREEMENT**

January 13, 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Deutsche Bank Securities Inc.  
UBS Securities LLC

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

As Representatives of the several Underwriters

Ladies and Gentlemen:

American Capital Agency Corp., a Delaware corporation (the "Company") and American Capital Agency Management, LLC, a Delaware limited liability company and manager of the Company (the "Manager"), confirm their agreement with each of the Underwriters named in Schedule I hereto (collectively, the "Underwriters," which term shall also include any underwriter hereinafter substituted as provided in Section 10 hereof), for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC are acting as representatives (in such capacity, if and as applicable, the "Representatives"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of 23,400,000 shares of common stock, par value \$0.01 per share, of the Company ("Common Stock") and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 3,510,000 additional shares of Common Stock to cover over allotments, if any. The aforesaid 23,400,000 shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the 3,510,000 shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are hereinafter called, collectively, the "Securities."

The Company and the Manager understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

Section 1. Representations and Warranties.

(a) Representations and Warranties by the Company. The Company represents and warrants to each Underwriter as of the date hereof, as of the Applicable Time referred to in Section 1(a)(iii) hereof, as of the Closing Time referred to in Section 2(c) hereof, and as of each Date of Delivery (if any) referred to in Section 2(b) hereof, and agrees with each Underwriter, as follows:

(i) Compliance with Registration Requirements. The Company has filed with the Securities and Exchange Commission (the "Commission") a shelf registration statement on Form S-3 (File No. 333-170374) under the Securities Act of 1933, as amended (the "1933 Act"), in respect of the Common Stock (including the Securities) on November 4, 2010, which contains a base prospectus, to be used in connection with the public offering and sale of the Securities; the Company satisfies all eligibility requirements for use of Form S-3 as contemplated by such registration statement and this Agreement; such registration statement became effective under the 1933 Act upon filing; the Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information with respect to such registration statement or otherwise; no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company, threatened by the Commission, and no notice of objection of the Commission to the use of such form of registration statement or any post-effective amendment thereto has been received by the Company (the base prospectus filed as part of such registration statement, in the form in which it was filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"); the various parts of such registration statement, including all exhibits thereto and any prospectus supplement or prospectus relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B under the 1933 Act to be part of such registration statement (any such information that was omitted from such registration statement at the time it became effective but that was deemed to be a part and included in such registration statement pursuant to Rule 430B under the 1933 Act is referred to as "430B Information"), each as amended at each time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; each preliminary prospectus used in connection with the offering of the Securities that omitted Rule 430B Information, including the related Basic Prospectus in the form first filed by the Company pursuant to Rule 424(b) under the 1933 Act is herein called, a "Preliminary Prospectus"; the final prospectus supplement specifically relating to the Securities prepared and filed with the Commission pursuant to Rule 424(b) under the 1933 Act is hereinafter called the "Prospectus Supplement"; the Basic Prospectus, as amended and supplemented by the Prospectus Supplement, is hereinafter called the "Prospectus"; any reference herein to the Basic Prospectus, each Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act; provided, however, that no representation or warranty included in any exhibit

to any such incorporated document, other than the representations and warranties contained herein, is deemed to be made to you; any reference to any amendment or supplement to the Basic Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement or base prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the 1933 Act and any documents filed under the Securities Exchange Act of 1934, as amended (the “1934 Act”), and incorporated therein, in each case after the date of the Basic Prospectus, each Preliminary Prospectus or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement.

(ii) No order preventing or suspending the use of the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and the Registration Statement, the Basic Prospectus, each Preliminary Prospectus and the Prospectus, at the time of filing thereof and at the time it became effective, as applicable, conformed in all material respects to the requirements of the 1933 Act and the rules and regulations of the Commission thereunder (the “1933 Act Regulations”) and did not and will not as of the Closing Time and each Date of Delivery (if any) contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(iii) For the purposes of this Agreement, the “Applicable Time” means 8:30 a.m. (New York City time) on January 14, 2011; the applicable Issuer General Use Free Writing Prospectus(es) issued at or prior to the Applicable Time and each Preliminary Prospectus issued at or prior to the Applicable Time, as most recently amended or supplemented immediately prior to the Applicable Time, taken together (collectively, and, with respect to any Securities, together with the information included on Schedule II hereto, all considered together, the “General Disclosure Package”) as of the Applicable Time, the Closing Time and each Date of Delivery (if any), does not and will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each such Issuer Limited Use Free Writing Prospectus, as supplemented by and taken together with the General Disclosure Package as of such Applicable Time, the Closing Time and each Date of Delivery (if any), will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this subsection and elsewhere in this Agreement:

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), relating to the Securities that (i) is required to be filed with the Commission by the Company, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not

required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule III hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

(iv) Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Representatives as described in Section 3(e), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, any Preliminary Prospectus, the Prospectus Supplement, the Prospectus, or other prospectus deemed to be a party thereof (including any document incorporated by reference therein) that has not been superseded or modified.

(v) Incorporation of Documents by Reference. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time they were or hereinafter filed with the Commission, as the case may be, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder (the “1934 Act Regulations”).

(vi) Ineligible Issuer. As of the date of this Agreement (with such date being used as the determination date for purposes of this clause), the Company is not an ineligible issuer (as defined in Rule 405 under the 1933 Act), without taking account of any determination by the Commission pursuant to Rule 405 under the 1933 Act that it is not necessary that the Company be considered an ineligible issuer (as defined in Rule 405 under the 1933 Act).

(vii) Independent Accountants. Ernst & Young LLP, who certified the financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, is an independent public accounting firm as required by the 1933 Act and the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations, and the Public Company Accounting Oversight Board (United States).

(viii) Financial Statements. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) applied on a

consistent basis throughout the periods involved. The selected financial data incorporated by reference in the General Disclosure Package and the Prospectus present fairly the information shown therein and was compiled on a basis consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement. Any disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G under the 1934 Act and Item 10 of Regulation S-K under the 1933 Act, to the extent applicable.

(ix) No Material Adverse Change in Business. Since the respective dates as of which information is given in the General Disclosure Package or the Prospectus (in each case exclusive of any amendments or supplements thereto subsequent to their respective dates), except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings and business affairs or business prospects of the Company together with its consolidated subsidiaries, all of which are listed on Schedule IV attached hereto (each, a “Subsidiary,” and collectively, the “Subsidiaries”), considered as one enterprise, whether or not arising in the ordinary course of business (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its Subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its Subsidiaries considered as one enterprise, (C) there has been no obligation, contingent or otherwise, directly or indirectly incurred by the Company or any of its Subsidiaries considered as one enterprise that could reasonably be likely to have a Material Adverse Effect and (D) except for regular quarterly dividends on the Common Stock in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(x) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure, individually or in the aggregate, so to qualify or to be in good standing would not result in a Material Adverse Effect.

(xi) Good Standing of Subsidiaries. Each Subsidiary is duly incorporated or organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with requisite power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, and to consummate the transactions contemplated hereby. Each Subsidiary is duly qualified as a foreign corporation, limited liability company, partnership or trust to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except



where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect; except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, all of the issued and outstanding equity interests in each Subsidiary have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company, directly or indirectly, free and clear of any security interests, mortgages, pledges, liens, encumbrances, claims or equitable interests; none of the outstanding equity interests in any Subsidiary was issued in violation of, or subject to, any preemptive right, co-sale right, registration right, right of first refusal or other similar rights of equity holders or any other person arising by operation of law, under the organizational documents of each Subsidiary, under any agreement to which any Subsidiary is a party or otherwise. The Company does not own or control, directly or indirectly, any equity interest in any corporation, joint venture, limited liability company, association or other entity other than the Subsidiaries. The Company does not, and did not as of December 31, 2010, have any "significant subsidiaries" (as defined in Rule 1-02(w) of Regulation S-X).

(xii) Capitalization. As of January 11, 2011, (A) 150,000,000 shares of Common Stock were authorized for issuance, of which 64,855,591 shares were issued and outstanding and (B) 10,000,000 shares of preferred stock, par value \$0.01 per share of the Company were authorized for issuance, none of which were issued or outstanding. The issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock was issued in violation of the preemptive or other similar rights of any securityholder of the Company. Upon completion of the issuance and sale of the Securities pursuant to this Agreement, the capitalization of the Company will be as set forth in the Prospectus in the column entitled "As Adjusted for This Offering" under the caption "Capitalization." Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there are no outstanding (A) securities or obligations of the Company or any of the Subsidiaries convertible into or exchangeable for any equity interests of the Company or any such Subsidiary, (B) warrants, rights or options to subscribe for or purchase from the Company or any such Subsidiary any such equity interests or any such convertible or exchangeable securities or obligations or (C) obligations of the Company or any such Subsidiary to issue any equity interests, any such convertible or exchangeable securities or obligation, or any such warrants, rights or options. The Company's Common Stock has been registered pursuant to Section 12(b) of the 1934 Act and is authorized for trading on the Nasdaq Global Select Market ("Nasdaq"), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock from Nasdaq, nor has the Company received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing. The Company is in compliance with the current listing standards of Nasdaq.

(xiii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company. This Agreement conforms in all material respects to the description thereof in the Registration Statement, the General Disclosure Package and the Prospectus.

(xiv) Description of Securities. The Securities conform to all statements relating thereto contained in the Registration Statement, the General Disclosure Package

and the Prospectus and such descriptions conform to the rights set forth in the instruments defining the same; no holder of the Securities will be subject to personal liability by reason of being such a holder.

(xv) Absence of Defaults and Conflicts. The Company is not in violation of its Amended and Restated Certificate of Incorporation (“Charter”) or its Amended and Restated Bylaws (“Bylaws”). No Subsidiary is in violation of its organizational documents (including, without limitation, partnership and limited liability company agreements). Neither the Company nor any of its Subsidiaries is in default in the performance or observance (nor has any event occurred which with notice, lapse of time or both would constitute a default in the observance or performance) of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary may be bound, or to which any of the property or assets of the Company or any Subsidiary is subject (collectively, “Agreements and Instruments”), except for such defaults that would not result in a Material Adverse Effect; and the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated herein (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Registration Statement, the General Disclosure Package and the Prospectus under the caption “Use of Proceeds”) and compliance by the Company with its obligations hereunder and thereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any Subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the Charter or Bylaws of the Company or the organizational documents of any Subsidiary (including, without limitation, partnership and limited liability company operating agreements), any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any Subsidiary or any of their assets, properties or operations. As used herein, a “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any Subsidiary.

(xvi) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company (without further inquiry), threatened, against or affecting the Company or any Subsidiary, which is required to be disclosed in the Registration Statement, the General Disclosure Package or the Prospectus (other than as disclosed therein), or which would reasonably be expected to result in a Material Adverse Effect, or which would reasonably be expected to materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations

hereunder; the aggregate of all pending legal or governmental proceedings to which the Company or any Subsidiary is a party or of which any of their respective property or assets is the subject which are not described in the Registration Statement, including ordinary routine litigation incidental to the business, would not, individually or in the aggregate, result in a Material Adverse Effect.

(xvii) Accuracy of Exhibits. There are no contracts or documents that are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto which have not been described in all material respects and filed as required by Item 601(b) of Regulation S-K under the 1933 Act. The copies of all contracts, agreements, instruments and other documents (including governmental licenses, authorizations, permits, consents and approvals and all amendments or waivers relating to any of the foregoing) that have been furnished to the Underwriter or its counsel are complete and genuine and include all material collateral and supplemental agreements thereto.

(xviii) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is required in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws or the rules of the Financial Industry Regulatory Authority, Inc. (the “FINRA”).

(xix) Absence of Manipulation. Other than permitted activity pursuant to Regulation M under the 1934 Act, neither the Company nor any of its affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an “Affiliate”), has taken, nor will the Company or any of its Affiliates take, directly or indirectly, any action that is designed to, has constituted or would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xx) Possession of Licenses and Permits. The Company and its Subsidiaries possess such permits, licenses, approvals, consents and other authorizations issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them as described in the Registration Statement, the General Disclosure Package and the Prospectus (collectively, the “Intangibles”), except where the failure so to possess is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect; the Company and its Subsidiaries are in compliance with the terms and conditions of all such Intangibles, except where the failure so to comply would not, individually or in the aggregate, result in a Material Adverse Effect; all of the Intangibles are valid and in full force and effect, except when the invalidity of such Intangibles or the failure of such Intangibles to be in full force and effect is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect; the Company and its Subsidiaries have not received any notice of proceedings relating to the revocation or modification of any such Intangibles which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would be reasonably likely to result in a Material Adverse Effect; the Company

and its Subsidiaries have not violated or received written notice of any infringement of or conflict with (and the Company does not know of any such infringement of or conflict with) asserted rights of others with respect to any such Intangibles, except where the infringement of or conflict with is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect.

(xxi) Personal Property. Neither the Company nor any Subsidiary owns any real property or holds any real property lease. The Company and its Subsidiaries have good title to all personal property, if any, owned by them, in each case, free and clear of all liens, security interests, pledges, charges, encumbrances, mortgages and defects, except as are disclosed in the Registration Statement, the General Disclosure Package and the Prospectus or as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(xxii) Investment Company Act. The Company is not required to register as an “investment company” under the Investment Company Act of 1940, as amended (the “1940 Act”).

(xxiii) Registration Rights. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus or which have been waived, there are no persons with registration or other similar rights to have any equity or debt securities, including securities that are convertible into or exchangeable for equity securities, registered pursuant to the Registration Statement or otherwise registered by the Company under the 1933 Act; no person has a right of participation, first refusal or similar right with respect to the sale of the Securities by the Company.

(xxiv) Accounting Controls and Disclosure Controls. The Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) receipts and expenditures are being made only in accordance with management’s general or specific authorization; (D) access to assets is permitted only in accordance with management’s general or specific authorization; and (E) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus, since the end of the Company’s most recent audited fiscal year, there has been (A) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (B) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting. The Company and its Subsidiaries, considered as one enterprise, have established and currently maintain disclosure controls and procedures that comply with Rule 13a-15 under the 1934 Act and the Company has determined that such disclosure controls and procedures are effective in compliance with Rule 13a-15 under the Exchange Act.

(xxv) No Commissions. Neither the Company nor any of its Subsidiaries is a party to any contract, agreement or understanding with any person (other than as

contemplated by this Agreement) that would give rise to a valid claim against the Company or any of its Subsidiaries or the Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities by the Underwriter under this Agreement.

(xxvi) Actively-Traded Security. The Common Stock is an "actively-traded security" exempted from the requirements of Rule 101 of Regulation M under the 1934 Act by subsection (c)(1) of such rule.

(xxvii) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxviii) Payment of Taxes. All tax returns of the Company and its Subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not result in a Material Adverse Effect.

(xxix) Absence of Transfer Taxes. There are no transfer taxes or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement or the sale by the Company of the Securities under this Agreement.

(xxx) Insurance. The Company and its Subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by companies of established repute engaged in the same or similar business, and all such insurance is in full force and effect. The Company has no reason to believe that it or any Subsidiary will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither the Company nor any Subsidiary has been denied any material insurance coverage which it has sought or for which it has applied.

(xxxi) Statistical and Market-Related Data. The statistical and market-related data included in the Registration Statement, the General Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate as of the respective dates of such documents, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(xxxii) Foreign Corrupt Practices Act. None of the Company, any Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or

other person acting on behalf of the Company or any of its Subsidiaries, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA. The Company and the Subsidiaries have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxiii) Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxiv) OFAC. None of the Company, any Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or person acting on behalf of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxv) Related Party Transactions. No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries on the one hand, and the directors, officers, trustees, managers, stockholders, partners, customers or suppliers of the Company or any of the Subsidiaries on the other hand, which would be required by the 1933 Act or by the 1933 Regulations to be described in the Registration Statement, the General Disclosure Package and the Prospectus, which is not so described.

(xxxvi) Noncompetition; Nondisclosure. Neither the Company nor any officer of the Company is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar arrangement that would be violated by the present or proposed business activities of the Company as described in the Registration Statement, the General Disclosure Package and the Prospectus.

(xxxvii) Pending Proceedings and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(xxxviii) REIT Status. Commencing with its initial taxable year ended December 31, 2008, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (collectively, the “Code”), and the Company’s current and proposed method of operations as described in the Registration Statement, the General Disclosure Package and the Prospectus will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2011 and thereafter. No transaction or other event has occurred that could cause the Company to not be able to qualify as a REIT for its taxable year ending December 31, 2011 or future taxable years. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, the Company and each of its Subsidiaries have no intention of changing their operations or engaging in activities that would cause the Company to fail to qualify, or make economically undesirable the Company’s continued qualification, as a REIT under the Code.

(xxxix) Tax Opinion. With respect to each legal opinion as to Federal income tax matters provided to the Underwriters pursuant to Section 5(b) hereof, the Company’s representatives have discussed with its counsel, Skadden, Arps, Slate, Meagher & Flom LLP, the officer’s certificate supporting each such opinion, and where representations in such officer’s certificate involve terms defined in the Code, the Treasury regulations thereunder, published rulings of the Internal Revenue Service or other relevant authority, the Company’s representatives are satisfied after their discussions with their counsel in their understanding of such terms and are capable of making such representations.

(xl) Description of Organization and Method of Operations. The description of the Company’s organization and current and proposed method of operations and its qualification and taxation as a REIT set forth in the Registration Statement, the General Disclosure Package and the Prospectus is accurate in all material respects and presents fairly the matters referred to therein. The Company’s conflicts of interest, operating policies, investment guidelines and operating restrictions described or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus accurately reflect in all material respects the guidelines and policies of the Company with respect to the operation of its business, and no material deviation from such guidelines or policies is currently contemplated.

(xli) Director Independence. Each of the independent directors (or independent director nominees, once appointed, if applicable) named in the Registration Statement, the General Disclosure Package and Prospectus satisfies the independence standards established by Nasdaq and, with respect to members of the Company’s audit committee, the enhanced independence standards contained in Rule 10A-3(b)(1) promulgated by the Commission under the 1934 Act.

(xlii) Broker/Dealer Status. The Company is not required to register as a “broker” or “dealer” in accordance with the provisions of the rules and the 1934 Act Regulations and does not, directly or indirectly through one or more intermediaries,

control or have any other association with (within the meaning of Article I of the By-laws of the FINRA) any member firm of the FINRA. No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers or stockholders of the Company, on the other hand, which is required by the rules of the FINRA to be described in the Registration Statement, the General Disclosure Package and the Prospectus, which is not so described.

(xliv) Dividends/Distributions. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, no Subsidiary is currently prohibited, directly or indirectly, from paying any dividends or distributions to the Company to the extent permitted by applicable law, from making any other distribution on such Subsidiary's issued and outstanding capital stock or other equity interests, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of the property or assets of such Subsidiary to the Company.

(b) Representations and Warranties by the Manager. The Manager represents and warrants to each Underwriter as of the date hereof as of the Applicable Time, as of the Closing Time, and, as of each such Date of Delivery (if any) and agrees with each Underwriter, as follows:

(i) Good Standing of the Manager. The Manager has been duly formed and is validly existing as a limited liability company in good standing under the laws of the State of Delaware and has power and authority to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Manager is duly qualified as a foreign limited liability company to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(ii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Manager and constitutes a valid and binding agreement of the Manager enforceable in accordance with its terms, except in each case as may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or thereafter in effect relating to creditors' rights generally and (B) general equitable principles and the discretion of the court before which any proceeding therefor may be brought.

(iii) Absence of Defaults and Conflicts. The Manager is not in violation of its organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Manager is a party or by which it may be bound, or to which any of the property or assets of the Manager is subject (collectively, the "Manager Agreements and Instruments"), or in violation of any law, statute, rule, regulation, judgment, order or decree, except for such violations or except for such defaults that would not result in a material adverse effect on the condition, financial or otherwise, or in the business affairs, business prospects or regulatory status of the Manager, whether or not arising in the ordinary course of business, or that would otherwise prevent the



Manager from carrying out its obligations under this Agreement (a “Manager Material Adverse Effect”). The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus and compliance by the Manager with its obligations under this Agreement do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Manager pursuant to the Manager Agreements and Instruments, nor will such action result in any violation of the provisions of the limited liability company operating agreement or other organizational documents of the Manager or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Manager or any of its assets, properties or operations, except as would not result in a Manager Material Adverse Effect.

(iv) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Manager, threatened, against or affecting the Manager, except for such matters that could not, individually or in the aggregate, result in a Manager Material Adverse Effect.

(v) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is required in connection with the offering or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws or the rules of the FINRA.

(vi) Financial Resources. The Manager has the financial and other resources available to it necessary for the performance of its services and obligations as contemplated in the Registration Statement, the General Disclosure Package and the Prospectus and under this Agreement and the Management Agreement between the Company and the Manager, dated May 20, 2008 (the “Management Agreement”).

(vii) Possession of Licenses and Permits. The Manager possesses such Intangibles issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, except where the failure so to possess would not, individually or in the aggregate, result in a Manager Material Adverse Effect; the Manager is in compliance with the terms and conditions of all such Intangibles, except where the failure so to comply would not, individually or in the aggregate, result in a Manager Material Adverse Effect; all of the Intangibles are valid and in full force and effect, except when the invalidity of such Intangibles or the failure of such Intangibles to be in full force and effect would not have a Manager Material Adverse Effect; and the Manager has not received any notice of proceedings relating to the revocation or modification of any such Intangibles which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Manager Material Adverse Effect.

(viii) Employment; Noncompetition; Nondisclosure. Except for any transfer of employees of ACAS to the Manager or as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, the Manager has not been notified that any executive officer of the Company or the Manager plans to terminate his or her employment with the Manager or ACAS, as applicable.

(ix) Investment Advisers Act. The Manager is not prohibited by the Investment Advisers Act of 1940, as amended (the "Advisers Act"), or the rules and regulations thereunder, from performing its obligations under the Management Agreement as described in the Registration Statement, the General Disclosure Package and the Prospectus; and the Manager is not registered and is not required to register as an investment adviser under the Advisers Act.

Section 2. Sale and Delivery to Underwriters; Closing.

(a) Initial Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at a price of \$26.74 per share of Common Stock, the number of Initial Securities set forth in Schedule I opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional securities.

(b) Option Securities. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 3,510,000 shares of Common Stock, at the price per share set forth in paragraph (a) above. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part at any time on or before the 30th day after the date hereof only for the purpose of covering overallotments, which may be made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule I opposite the name of such Underwriter bears to the total number of Initial Securities, subject in each case to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) Payment. The Securities shall be delivered by the Company to the Representatives, including, at the option of the Representatives, through the facilities of DTC for the account of the Representatives, against payment by the Representatives of the purchase price therefor by wire transfer of immediately available funds to a bank account designated by the Company. The time and date of such delivery and payment shall be 10:00 a.m. (New York City

time) on the third (fourth, if the pricing occurs after 4:30 p.m. (New York City time) on any given day) business day after the date hereof, or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Section 3. Covenants of the Company and the Manager. The Company and the Manager covenant with each Underwriter as follows:

(a) Compliance with Securities Regulations and Commission Requests. The Company, subject to Section 3(b) hereof, will comply with the requirements of Rule 430B and will notify the Representatives promptly, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall have been declared effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or of any order preventing or suspending the use of any Preliminary Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect the filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)). The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Filing of Amendments and Exchange Act Documents. The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement or any amendment, supplement or revision to any Preliminary Prospectus or to the Prospectus, whether pursuant to the 1933 Act, the 1934 Act or otherwise, and the Company will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object, except as required by law. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the execution of this Agreement; the Company will give the Representatives notice of its intention to make any such filing from the execution of this Agreement to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing and will not file or use any such document to which the Representatives or counsel for the Representatives shall reasonably object, except as required by law.

(c) Delivery of Registration Statements. Upon request, the Company will furnish or will deliver to the Representatives and counsel for the Underwriters, without charge, conformed copies of the Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and conformed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”), except to the extent permitted by Regulation S-T.

(d) Delivery of Prospectuses. The Company has delivered to each Underwriter, without charge, as many copies of each Preliminary Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) Continued Compliance with Securities Laws. The Company will comply with the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be necessary to correct such statement or omission or to comply with such requirements, the Company will use its best efforts to have such amendment declared effective as soon as practicable (if it is not an automatic shelf registration statement with respect to the Securities) and the Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the General Disclosure Package or the Prospectus, or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) Blue Sky Qualifications. The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect for a period of not less than one year from the date hereof; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) Rule 158. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its security holders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) Use of Proceeds. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Prospectus under "Use of Proceeds."

(i) Listing. The Company will use its best efforts to effect and maintain the quotation of the Securities on Nasdaq.

(j) Restriction on Sale of Securities. During a period of 30 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the shares of Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of shares of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the (A) Securities to be sold hereunder, (B) any shares of Common Stock sold pursuant to the Company's Direct Stock Purchase Program and Dividend Reinvestment Program; *provided that* the Company shall not grant any purchase volume waivers under such plan during the period of 30 days from the date of the Prospectus, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company or (D) any shares of Common Stock issued pursuant to any non-employee director stock plans or dividend reinvestment plans.

(k) Issuer Free Writing Prospectuses. Each of the Company and the Manager represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company, the Manager and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute an "issuer free writing prospectus," as defined in Rule 433, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company, the Manager and the Representatives is hereinafter referred to as a "Permitted Free Writing Prospectus." Each of the Company and the Manager represents that it has treated or agrees that

it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(l) Share Price Manipulation. Each of the Company and the Manager agrees that it will not, and will cause its respective officers and directors (and in the case of the Manager, ACAS) and their respective subsidiaries not to, take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities to facilitate the sale or resale of the Securities, provided that the Company may bid for and purchase its Common Stock in accordance with Rule 10b-18 under the 1934 Act.

(m) REIT Qualification. The Company will use its best efforts to continue to meet the requirements for qualification and taxation as a REIT under the Code, subject to any future determination by the Company’s board of directors that it is no longer in the Company’s best interests to qualify as a REIT.

(n) Investment Company Act. The Company will use its best efforts to conduct its affairs and the affairs of its Subsidiaries in such a manner so as to ensure that neither the Company nor any of its Subsidiaries will be an “investment company” (as defined in the Investment Company Act of 1940 (the “1940 Act”)) or an entity “controlled” by an investment company that is required to be registered under the 1940 Act.

(o) Undertakings. The Company will comply with all of the provisions of any undertakings in the Registration Statement.

(p) Transfer Agent. The Company has engaged and will maintain, at its sole expense, a registrar and transfer agent for the Securities.

(q) Liability Insurance. The Company will obtain or maintain, as appropriate, directors and officers liability insurance in an amount deemed advisable by the Company in its reasonable discretion.

#### Section 4. Payment of Expenses.

(a) Expenses. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Securities, if any, to the Underwriters, including any applicable stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel and accountants, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky Survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each Preliminary Prospectus, any

Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vii) the fees and expenses of any transfer agent or registrar for the Securities, (viii) the reasonable costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including, expenses associated with the production of road show slides and graphics, but excluding travel and reasonable lodging expenses of the Underwriters and representatives and officers of the Company (which shall be paid by the Underwriters), and (ix) any filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with the review by FINRA of the terms of the sale of the Securities (subject to a maximum of \$10,000) and (x) the fees and expenses incurred in connection with the quotation of the Securities on Nasdaq.

(b) Termination of Agreement. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, (including the reasonable fees and disbursements of counsel for the Underwriters) actually incurred in connection with the proposed purchase and the public offering and sale of the Securities.

Section 5. Conditions of Underwriters' Obligations. The obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company and the Manager contained in Section 1 hereof or in certificates of any officer of the Company or any subsidiary of the Company or the Manager delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) Effectiveness of Registration Statement; Filing of Prospectus; Payment of Filing Fee. The Registration Statement became effective and at the Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefore initiated or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430B Information shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) without reliance on Rule 424(b)(8) (or a post-effective amendment providing such information shall have been filed and have been declared effective in accordance with the requirements of Rule 430B). The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by the 1933 Act Regulations.

(b) Opinion of Counsel for Company. At Closing Time, the Representatives shall have received the favorable opinions, dated as of Closing Time, of Skadden, Arps, Slate, Meagher & Flom LLP, in form and substance satisfactory to counsel for the Underwriters to the effect set forth in Exhibit A and Exhibit B hereto and to such further effect as counsel to the Underwriters may reasonably request.

(c) Opinion of Counsel for Underwriters. At the Closing Time, the Representatives shall have received the favorable opinion, dated as of the Closing Time, of Hunton & Williams LLP with respect to the matters the Underwriters reasonably request. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company, the Manager and certificates of public officials.

(d) Officers' Certificates. At Closing Time, there shall not have been, since the date hereof, since the Applicable Time or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any Material Adverse Effect or Manager Material Adverse Effect. The Underwriters shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of Closing Time, to the effect that (i) there has been no such Material Adverse Effect, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, contemplated by the Commission. The Representatives shall have also received a certificate of the President of the Manager and of the Treasurer of the Manager, dated as of the Closing Time, to the effect that (i) there has been no Manager Material Adverse Effect, (ii) the representations and warranties in Section 1(b) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time and (iii) the Manager has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time.

(e) CFO Certificate. At the time of the execution of this Agreement, the Underwriters shall have received a certificate of the chief financial or chief accounting officer of the Company, dated as of such date in the form set forth in Exhibit C hereto. At Closing Time, the Underwriters shall have received a certificate, dated as of Closing Time, of the Chief Financial Officer or chief accounting officer of the Company confirming that the certificate delivered by the Company at the time of the execution of this Agreement pursuant to the prior sentence of this Section 5(e) hereof remains true and correct as of such Date of Delivery.

(f) Accountant's Comfort Letter. At the time of the execution of this Agreement, the Underwriter shall have received from Ernst & Young LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letters for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus. Such letters shall address the audited financial statements, any unaudited interim financial statements (including a statement that such unaudited financial statements have been reviewed in accordance with the standards established under Statement on Auditing Standards No. 100) and any pro forma financial statements and also shall provide customary negative assurances.

(g) Bring-down Comfort Letter. At Closing Time, the Representatives shall have received from Ernst & Young LLP a letter, dated as of Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section 5, except that the specified date referred to shall be a date not more than three business days prior to Closing Time.



(h) Approval of Listing. At Closing Time, the Securities shall have been approved for quotation on Nasdaq.

(i) No Objection. FINRA shall have not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(j) Lock up Agreements. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit D hereto signed by the persons and entities listed on Schedule V.

(k) Conditions to Purchase of Option Securities. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company and the Manager contained herein and the statements in any certificates furnished by the Company and the Manager hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the Chief Financial Officer or chief accounting officer of the Company confirming that the certificate delivered by the Company at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Officers' Certificate. A certificate, dated such Date of Delivery, of the President of the Manager and of the Treasurer of the Manager confirming that the certificate delivered by the Manager at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(iii) CFO Certificate. A certificate, dated such Date of Delivery, of the Chief Financial Officer or chief accounting officer of the Company confirming that the certificate delivered by the Company at the time of execution of this Agreement pursuant to Section 5(e) hereof remains true and correct as of such Date of Delivery.

(iv) Opinion of Counsel for Company. The favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and the Manager, each in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinions required by Section 5(b) hereof.

(v) Opinion of Counsel for Underwriters. The favorable opinion of Hunton & Williams LLP, special counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(vi) Bring-down Comfort Letter. A letter from Ernst & Young LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(f) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three days prior to such Date of Delivery.

(l) Additional Documents. At the Closing Time and at each Date of Delivery, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling it to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

(m) Termination of Agreement. If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to the Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party, except as provided in Section 4(b) and except that this paragraph and Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

#### Section 6. Indemnification.

(a) Indemnification of Underwriters. The Company agrees to indemnify and hold harmless each Underwriter, its Affiliates, its selling agents and each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), and including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any Preliminary Prospectus and the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Issuer Limited Use Free Writing Prospectus or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(iii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(e) below) any such settlement is effected with the written consent of the Company;

(iv) against any and all expense (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with the Underwriter Content.

(b) Indemnification of Company, Directors and Officers. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section 6, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement, the General Disclosure Package or the Prospectus in reliance upon and in conformity with the Underwriter Content. The Company hereby acknowledges that the only information that the Underwriters have furnished to the Company expressly for use in the Registration Statement, the General Disclosure Package or the Prospectus are the statements set forth under the caption "Underwriting" in such documents as follows: the first sentence of paragraph 9, and the third and fourth sentences of paragraph 10, each relating to price stabilization activities and paragraph 11 relating to electronic prospectus delivery and paragraph 12 relating to Nomura Securities North America, LLC (collectively, the "Underwriter Content").

(c) Actions Against Parties; Notification. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon

receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party, representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) Settlement without Consent if Failure to Reimburse. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 6(d) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

Section 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, (i) no Underwriter shall be required to contribute an amount in excess of the underwriting discounts and commissions applicable to the Securities purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company.

The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule I hereto and not joint.

Section 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or the Manager submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company, the person controlling the Manager and (ii) delivery of and payment for the Securities.

## Section 9. Termination of Agreement.

(a) Termination; General. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the General Disclosure Package or the Prospectus (exclusive of any supplement thereto), any Material Adverse Effect or Manager Material Adverse Effect, the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any material and adverse change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Underwriter, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or Nasdaq, or if trading generally on the New York Stock Exchange or The NASDAQ Stock Market, Inc. has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States such that settlement and clearance of the sale of the Securities is impracticable or impossible, or (v) if a banking moratorium has been declared by either federal or New York State authorities.

(b) Liabilities and Expenses. If this Agreement is terminated pursuant to this Section 9, (i) such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that this paragraph and Sections 1, 6, 7 and 9(a) shall survive such termination and remain in full force and effect, and (ii) the Underwriters shall only be entitled to receive out-of-pocket expenses actually incurred.

Section 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement, or, with respect to any Date of

Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Securities to be purchased and sold on such Date of Delivery, shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

Section 11. Tax Disclosure. Notwithstanding any other provision of this Agreement, from the commencement of discussions with respect to the transactions contemplated hereby, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Sections 6011, 6111 and 6112 of the U.S. Code and the Treasury Regulations promulgated thereunder) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure.

Section 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York, 10013, Attention: Equity Capital Markets Syndicate, with a copy to (which shall not constitute notice) Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attention of Edward W. Elmore, Jr., Esq.; notices to the Company and the Manager shall be directed to each of them at 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814, attention of Secretary, each with a copy to (which shall not constitute notice) Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attention of David J. Goldschmidt, Esq.

Section 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Manager, on the one hand, and the several Underwriters, on the other hand, (ii) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, the Manager, or their respective stockholders, creditors, employees or any other party, (iii) each Underwriter has not assumed and will not assume an advisory or fiduciary responsibility in favor of the Company or the Manager with respect to the offering contemplated hereby or the process

leading thereto (irrespective of whether the Underwriter has advised or is currently advising the Company or the Manager on other matters) and each Underwriter has no obligation to the Company or the Manager with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Underwriters and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of each of the Company and the Manager, and (v) the Underwriters and their respective agents have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company and the Manager have consulted their own respective legal, accounting, regulatory and tax advisors to the extent each deemed appropriate.

Section 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Manager and the Underwriters, or any of them, with respect to the subject matter hereof.

Section 15. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company, the Manager and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company, the Manager and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company, the Manager and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

Section 16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

Section 18. Counterparts. This Agreement 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 Agreement.

Section 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

[Signature Page Follows.]



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

Very truly yours,

**AMERICAN CAPITAL AGENCY CORP.**

By: \_\_\_\_\_

Name:

Title:

**AMERICAN CAPITAL AGENCY MANAGEMENT, LLC**

By: \_\_\_\_\_

Name:

Title:

CONFIRMED AND ACCEPTED,  
as of the date first above written:

For themselves and as Representatives of the several Underwriters named in Schedule I hereto.

**MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**CITIGROUP GLOBAL MARKETS INC.**

By: \_\_\_\_\_  
Name:  
Title:

**DEUTSCHE BANK SECURITIES INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**UBS SECURITIES LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**

<u>Name of Underwriter</u>	<u>Number of Initial Securities</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	4,797,000
Citigroup Global Markets Inc.	4,797,000
Deutsche Bank Securities Inc.	4,797,000
UBS Securities LLC	4,797,000
J.P. Morgan Securities LLC	1,170,000
Wells Fargo Securities, LLC	1,170,000
Mitsubishi UFJ Securities (USA), Inc.	468,000
Nomura Securities North America, LLC	468,000
RBC Capital Markets, LLC	468,000
Wunderlich Securities, Inc.	468,000
<b>Total</b>	<b><u>23,400,000</u></b>

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**SCHEDULE II**

Information Conveyed at the Applicable Time

Price to Public: \$28.00

Number of Shares Offered: 23,400,000

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**SCHEDULE III**

Issuer General Use Free Writing Prospectus

Free writing prospectus dated January 12, 2011, as filed with the Commission on January 12, 2011

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**SCHEDULE IV**

List of Subsidiaries

American Capital Agency TRS, LLC, a Delaware limited liability company

**SCHEDULE V**

List of Persons and Entities Subject to Lock Up Agreements

American Capital Agency Management, LLC

Malon Wilkus

John R. Erickson

Samuel A. Flax

Alvin N. Puryear

Morris A. Davis

Gary Kain

Randy E. Dobbs

Larry K. Harvey

## [SUBJECT TO OPINION COMMITTEE REVIEW]

January [20], 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Deutsche Bank Securities Inc.  
UBS Securities LLC

As Representatives of the several Underwriters

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Re: American Capital Agency Corp. – Offering of Common Stock

Ladies and Gentlemen:

We have acted as special counsel to American Capital Agency Corp., a Delaware corporation (the “Company”), in connection with the Underwriting Agreement, dated January [13], 2011 (the “Underwriting Agreement”), among you, as representatives of the several Underwriters named therein (the “Underwriters”), the Company and American Capital Agency Management, LLC, a Delaware limited liability company (the “Manager”, and collectively with the Company, the “Opinion Parties”, and each, an “Opinion Party”), relating to the sale by the Company to the Underwriters of [23,400,000] shares (the “Firm Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), and up to an additional [3,510,000] shares of Common Stock (the “Option Shares”) at the Underwriters’ option to cover over-allotments. The Firm Shares and the Option Shares are collectively referred to herein as the “Securities.”

This opinion is being furnished to you pursuant to Section 5(b) of the Underwriting Agreement.



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

(a) the registration statement on Form S-3 (File No. 333-170374) of the Company relating to the Securities and other securities of the Company filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933 (the "Securities Act") allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Securities Act (the "Rules and Regulations"), including information deemed to be a part of the registration statement pursuant to Rule 430B of the Rules and Regulations (such registration statement, at the time it became effective, being hereinafter referred to as the "Registration Statement");

(b) the prospectus, dated November 4, 2010 (the "Base Prospectus"), which forms a part of and is included in the Registration Statement;

(c) the preliminary prospectus supplement, dated January 12, 2011 (the "Preliminary Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, the "Preliminary 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) the free writing prospectus, dated January 12, 2011, relating to the offering of the Securities in the form filed by the Company with the Commission pursuant to Rule 433 of the Rules and Regulations (the "Free Writing Prospectus");

(e) the final prospectus supplement, dated January [13], 2011 (the "Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, 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;

(f) the documents described on Schedule A hereto filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934 and incorporated by reference into the Preliminary Prospectus or the Prospectus, as the case may be, as of the date of the Preliminary Prospectus Supplement or Prospectus Supplement, respectively (the "Incorporated Documents");

(g) an executed copy of the Underwriting Agreement;

(h) a copy of the Amended and Restated Certificate of Incorporation of the Company, certified by the Secretary of State of the State of Delaware as of November 8, 2010, and certified pursuant to the Company's Secretary's Certificate (as defined below);

(i) a copy of the Amended and Restated Bylaws of the Company, as amended and in effect as of the date hereof, certified pursuant to the Company's Secretary's Certificate;

(j) a copy of the resolutions of the Board of Directors of the Company with respect to the Underwriting Agreement and the authorization of the issuance and sale of the Securities, adopted on October 20, 2009 and October 25, 2010, and a copy of the resolutions of the Pricing Committee of the Board of Directors with respect to the issuance and sale of the Securities, adopted on January [13], 2011, certified pursuant to the Company's Secretary's Certificate;

(k) a copy of the Certificate of Formation of the Manager, certified by the Secretary of State of the State of Delaware as of November 8, 2010, and certified pursuant to the Manager's Secretary's Certificate (as defined below);

(l) a copy of the Limited Liability Company Operating Agreement of the Manager, dated January 8, 2008, and the First Amendment thereto, dated October 19, 2009, entered into by American Capital LLC, the sole member of the Manager, certified pursuant to the Manager's Secretary's Certificate (the "Manager Operating Agreement");

(m) a copy of the resolutions of the sole member of the Manager with respect to the Underwriting Agreement, adopted on January [13], 2011, certified pursuant to the Manager's Secretary's Certificate;

(n) an executed copy of the certificate of Samuel A. Flax, the Secretary and Executive Vice President of the Company and the Secretary and Vice President of the Manager, dated the date hereof (the "Officer's Certificate");

(o) an executed copy of the certificate of Samuel A. Flax, the Secretary of the Company, dated the date hereof (the "Company's Secretary's Certificate");

(p) an executed copy of the certificate of Samuel A. Flax, the Secretary of the Manager, dated the date hereof (the "Manager's Secretary's Certificate", and collectively with the Company's Secretary's Certificate, the "Secretary's Certificates");

(q) the certificates of John R. Erickson, the Executive Vice President and Chief Financial Officer of the Company, dated January [13], 2011 and dated the date hereof;

(r) executed copies of officers' certificates of the Company and the Manager, each dated the date hereof, delivered pursuant to the Underwriting Agreement;

(s) copies of incumbency certificates of officers of the Company and the Manager, each dated the date hereof;

(t) an executed copy of the certificate of Gary Kain, the Senior Vice President and Chief Investment Officer of the Company, dated the date hereof, relating to certain matters under the Investment Company Act of 1940, as amended (such Act, the "1940 Act" and such certificate, the "1940 Act Certificate");

(u) an executed copy of the certificate of Samuel A. Flax, the Secretary and Vice President of the Manager, dated the date hereof, relating to certain matters under the Investment Advisers Act of 1940, as amended (such Act, the "Advisers Act" and such certificate, the "Advisers Act Certificate");

(w) an executed copy of the Management Agreement between the Company and the Manager, dated May 20, 2008 (the "Management Agreement" or the "Company Scheduled Contract");

(v) an executed copy of the Administrative Services Agreement between the Manager and American Capital, Ltd., dated May 20, 2008 (together with the Management Agreement, the "Manager Scheduled Contracts");

(w) a certificate, dated January 12, 2011, and a bringdown verification thereof, dated the date hereof, from the Secretary of State of the State of Delaware, with respect to the Company's existence, due incorporation and good standing in the State of Delaware (the "Company Delaware Certificates"); and

(x) a certificate, dated January 12, 2011, and a bringdown verification thereof, dated the date hereof, from the Secretary of State of the State of Delaware, as to the Manager's existence, due formation and good standing in the State of Delaware (the "Manager Delaware Certificates", and collectively with the Company Delaware Certificates, the "Delaware Certificates").

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and the Manager and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company, the Manager and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions stated below.

In our examination, we have assumed the genuineness of all signatures including endorsements, 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 photostatic 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, the Manager and others and of public officials, including the facts and conclusions set forth in the Officer's Certificate.

We do not express any opinion with respect to the laws of any jurisdiction other than (i) the laws of the State of New York, (ii) the federal laws of the United States of America, (iii) the General Corporation Law of the State of Delaware (the “DGCL”) and the Delaware Limited Liability Company Act (the “DLLCA”) and (iv) for purposes of the opinions stated in paragraphs 9 and 10, the 1940 Act and the Advisers Act, respectively.

As used herein: “Organizational Documents” means those documents listed in paragraphs (g), (h), (j) and (k) above. “Scheduled Contracts” means the Company Scheduled Contract and the Manager Scheduled Contracts. “Scheduled Orders” means those orders or decrees described on Schedule B and Schedule C hereto. “General Disclosure Package” means the Preliminary Prospectus, as amended and supplemented by the information set forth on Schedule II to the Underwriting Agreement, together with the Free Writing Prospectus.

The opinions stated herein are subject to the following qualifications, assumptions and limitations:

(a) we do not express any opinion with respect to whether the execution, delivery or performance by any Opinion Party of its obligations under the Underwriting Agreement will constitute a violation of, or a default under, any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of any Opinion Party or any of its subsidiaries;

(b) the opinion stated in paragraph 5 above is based solely on our discussions with the officers or other representatives of the Company responsible for the matters discussed therein, our review of documents furnished to us by the Company and our reliance on the representations and warranties of the Company contained in the Underwriting Agreement and the Officer’s Certificate; we have not made any other inquiries or investigations or any search of the public docket records of any court, governmental agency or body or administrative agency. In addition, we call to your attention that we have not been engaged by, nor have we rendered any advice to, the Company in connection with any legal or governmental proceedings. Accordingly, we do not have any special knowledge with respect to such matters;

(c) the opinion stated in paragraph 9 above is based solely on our discussions with the officers of the Company responsible for the matters discussed therein and our reliance on the representations and warranties of the Company contained in the Underwriting Agreement and the 1940 Act Certificate;

(d) the opinion stated in paragraph 10 above is based solely on our discussions with the officers of the Manager responsible for the matters discussed therein and our reliance on the representations and warranties of the Manager contained in the Underwriting Agreement and the Advisers Act Certificate; and

(e) we have assumed that the Manager Operating Agreement is the only agreement of the members of the Manager as to the affairs of the Manager and the conduct of its business, and we do not express any opinion with respect to the effect of any other agreement of the members the Manager as to the affairs of the Manager and the conduct of its business.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions stated herein, we are of the opinion that:

1. Based solely on our review of the Delaware Certificates, each Opinion Party is duly incorporated or duly formed, as applicable, and is validly existing and in good standing under the DGCL or the DLLCA, as applicable.
2. Each Opinion Party has the corporate or limited liability company, as applicable, power and authority to execute and deliver the Underwriting Agreement and to consummate the transactions contemplated thereby under the DGCL or the DLLCA, as applicable.
3. The Underwriting Agreement has been duly authorized by all requisite corporate or limited liability company, as applicable, action on the part of each Opinion Party and duly executed and delivered by such Opinion Party under the DGCL or the DLLCA, as applicable.
4. Neither the execution and delivery by either Opinion Party of the Underwriting Agreement nor the consummation by such Opinion Party of the transactions contemplated thereby, including the issuance and sale of the Securities: (i) conflicts with the Organizational Documents of such Opinion Party, (ii) constitutes a violation of, or a default under, any Scheduled Contract to which such Opinion Party is a party, (iii) contravenes any Scheduled Order to which such Opinion Party is subject, (iv) violates any law, rule or regulation of the State of New York, the State of Delaware or the United States of America, or (v) requires the consent, approval, licensing or authorization of, or any filing, recording or registration with, any governmental authority under any law, rule or regulation of the State of New York, the state of Delaware or the United States of America except for those consents, approvals, licenses and authorizations already obtained and those filings, recordings and registrations already made.
5. To our knowledge, there are no legal or governmental proceedings pending to which the Company is a party or to which any property of the Company is subject that are required to be disclosed in the Prospectus pursuant to Item 103 of Regulation S-K of the Rules and Regulations that are not so disclosed.

6. The Firm Shares have been duly authorized by all requisite corporate action on the part of the Company under the DGCL and, when delivered to and paid for by the Underwriters in accordance with the terms of the Underwriting Agreement and registered in book-entry form, will be validly issued, fully paid and non-assessable, and free and clear of any preemptive rights or any similar rights arising under the DGCL, the Organizational Documents of the Company and the Company Scheduled Contract.

7. The statements in the Prospectus and the General Disclosure Package under the caption "Description of Securities," insofar as such statements purport to summarize certain provisions of the terms of the Common Stock and the DGCL, fairly summarize such provisions of the terms of such securities and the DGCL, respectively, in all material respects.

8. The statements in the Prospectus and the General Disclosure Package under the caption "Underwriting," insofar as such statements purport to summarize certain provisions of the Underwriting Agreement, fairly summarize such provisions in all material respects.

9. The Company is not and, solely after giving effect to the offering and sale of the Firm Shares and the application of the proceeds thereof as described in the Prospectus and the General Disclosure Package, will not be subject to registration and regulation as an "investment company" as such term is defined in the 1940 Act.

10. The Manager is not subject to registration and regulation as an "investment adviser" as such term is defined in the Advisers Act.

11. The Company has authority to issue 150,000,000 shares of Common Stock and 10,000,000 shares of preferred stock, par value \$0.01 per share, and such authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Prospectus and the General Disclosure Package.

This opinion is furnished only to you as representatives of the Underwriters and is solely for the Underwriters' benefit in connection with the closing occurring today and the offering of the Firm Shares, in each case pursuant to the Underwriting Agreement. Without our prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Firm Shares or that seeks to assert your rights in respect of this opinion (other than an Underwriter's successor in interest by means of merger, consolidation, transfer of a business or other similar transaction).

Very truly yours,

Incorporated Documents

Annual Report on Form 10-K for the year ended December 31, 2009 filed on February 24, 2010

Amendment No. 1 on Form 10-K/A to the Annual Report for the year ended December 31, 2009 filed on July 12, 2010

Quarterly Report on Form 10-Q for the quarter ended March 31, 2010 filed on May 3, 2010

Amendment No. 1 on Form 10-Q/A to the Quarterly Report for the quarter ended March 31, 2010 filed on July 12, 2010

Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 filed on August 6, 2010

Quarterly Report on Form 10-Q for the quarter ended September 30, 2010 filed on November 8, 2010

Current Reports on Form 8-K filed on May 19, 2010, October 5, 2010, November 9, 2010 and December 15, 2010

The portions of the Definitive Proxy Statement on Schedule 14A filed on April 2, 2010 that are incorporated by reference in the Annual Report on Form 10-K for the year ended December 31, 2009

The description of the Common Stock set forth in the registration statement on Form 8-A filed on May 9, 2008

Company Scheduled Orders

None



Manager Scheduled Orders

None

**[Subject to Opinion Committee Review]**

January \_\_, 2011

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Citigroup Global Markets Inc.  
Deutsche Bank Securities Inc.  
UBS Securities LLC

As Representatives of the several Underwriters  
named in Schedule I of the Underwriting Agreement

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Re: Certain United States Federal Income Tax Matters

Ladies and Gentlemen:

You have requested our opinion concerning certain United States Federal income tax considerations in connection with the sale (the "Sale") by American Capital Agency Corp., a Delaware corporation ("ACAC"), to the several Underwriters named in Schedule I (the "Underwriters") of the Underwriting Agreement among Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC as representatives of the several Underwriters, and ACAC and American Capital Agency Management, LLC, dated as of January [\_\_], 2011 (the "Underwriting Agreement"), of 23,400,000 shares of ACAC's common stock, par value \$0.01 per share, and an additional [3,510,000] shares of ACAC's common stock at the Underwriters' option to cover over-allotments (collectively, the "Shares"), pursuant to a shelf registration statement on Form S-3 filed with the Securities and Exchange Commission (the "Commission"), including the base prospectus dated as of November 4, 2010, the preliminary prospectus supplement thereto dated as of January [\_\_], 2011, and the final prospectus supplement thereto dated as of January [\_\_], 2011 (the "Offering Documents"). We have acted as tax counsel to ACAC in connection with, and have participated in the preparation of, the Offering Documents. This opinion is being furnished to you pursuant to Section 5(b) of the Underwriting Agreement. Capitalized terms used herein but not defined shall have the meanings set forth in the Underwriting Agreement.

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In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the Offering Documents and such other documentation and information provided to us by ACAC as we have deemed necessary or appropriate as a basis for the opinion set forth herein. In addition, ACAC has provided us with, and we are relying upon, a certificate containing certain factual statements, factual representations and covenants of officers of ACAC (the "Officers' Certificate") relating to, among other things, the actual and proposed operations of ACAC and the entities in which it holds, or has held, a direct or indirect interest (collectively, the "Company"). For purposes of our opinion, we have not independently verified the facts, statements, representations and covenants set forth in the Officers' Certificate, the Offering Documents, or in any other document. In particular, we note that the Company may engage in transactions in connection with which we have not provided legal advice, and have not reviewed, and of which we may be unaware. Consequently, we have relied on ACAC's representation that the facts, statements, representations, and covenants presented in the Officers' Certificate, the Offering Documents, and other documents, or otherwise furnished to us, accurately and completely describe all material facts relevant to our opinion. We have assumed that all such facts, statements, representations and covenants are true without regard to any qualification as to knowledge, belief, intent, materiality, or otherwise. Our opinion is conditioned on the continuing accuracy and completeness of such facts, statements, representations and covenants. We are not aware of any facts inconsistent with the statements in the Officers' Certificate. Any material change or inaccuracy in the facts, statements, representations, and covenants referred to, set forth, or assumed herein or in the Officers' Certificate may affect our conclusions set forth herein.

In our review of certain documents in connection with our opinion as expressed below, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, photostatic, or electronic copies, and the authenticity of the originals of such copies. Where documents have been provided to us in draft form, we have assumed that the final executed versions of such documents will not differ materially from such drafts.

Our opinion is also based on the correctness of the following assumptions: (i) ACAC and each of the entities comprising the Company has been and will continue to be operated in accordance with the laws of the jurisdictions in which they were formed, and in the manner described in the relevant organizational documents, (ii) there will be no changes in the applicable laws of the State of Delaware or of any other jurisdiction under the laws of which any of the entities comprising the Company have been formed, and (iii) each of the written agreements to which the Company is a party has been and will be implemented, construed and enforced in accordance with its terms.

In rendering our opinion, we have considered and relied upon the Internal Revenue Code of 1986, as amended (the "Code"), the regulations promulgated thereunder ("Regulations"), administrative rulings and other Treasury interpretations of the Code and the

Regulations by the courts and the Internal Revenue Service (“IRS”), all as they exist at the date hereof. It should be noted that the Code, Regulations, judicial decisions, and administrative interpretations are subject to change at any time and, in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinion could affect our conclusions set forth herein. In this regard, an opinion of counsel with respect to an issue represents counsel’s best judgment as to the outcome on the merits with respect to such issue, is not binding on the IRS or the courts, and is not a guarantee that the IRS will not assert a contrary position with respect to such issue or that a court will not sustain such a position if asserted by the IRS.

We express no opinion as to the laws of any jurisdiction other than the federal laws of the United States. We express no opinion on any issue relating to ACAC or any investment therein, other than as expressly stated herein.

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (A) ANY FEDERAL TAX ADVICE CONTAINED HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY PERSON, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE CODE; (B) THE ADVICE IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTION OR THE MATTERS ADDRESSED HEREIN BY THE COMPANY; AND (C) YOU SHOULD SEEK ADVICE BASED ON YOUR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

Based on and subject to the foregoing, we are of the opinion that:

1. Commencing with ACAC’s initial taxable year that ended on December 31, 2008, ACAC has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a “REIT”) under the Code, and its actual method of operation through the date of this opinion has enabled, and its proposed method of operation will continue to enable, it to meet the requirements for qualification and taxation as a REIT for its taxable year ending December 31, 2011 and subsequent years. As noted in the Offering Documents, ACAC’s qualification and taxation as a REIT depend upon its ability to meet, through actual operating results, certain requirements relating to the sources of its income, the nature of its assets, its distribution levels and the diversity of its stock ownership, and various other qualification tests imposed under the Code, the results of which are not reviewed by us. Accordingly, no assurance can be given that the actual results of ACAC’s operations for any one taxable year will satisfy the requirements for taxation as a REIT under the Code.

2. Although the discussion set forth in the Offering Documents under the headings “Federal Income Tax Considerations” and “Supplement to Federal Income Tax Considerations” does not purport to discuss all possible United States Federal income tax consequences of the ownership and disposition of the Shares, such discussion, though general in nature, constitutes, in all material respects, a fair and accurate summary under current law of the material United States Federal income tax consequences of the ownership and disposition of the Shares of ACAC, subject to the qualifications set forth therein.

This opinion has been prepared for you in connection with the Sale and pursuant to Section 5(b) of the Underwriting Agreement. This opinion may not be relied upon by anyone else without our prior written consent. This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments or factual matters arising subsequent to the date hereof, or the impact of any information, document, certificate, record, statement, representation, covenant, or assumption relied upon herein that becomes incorrect or untrue.

Very truly yours,

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## AMERICAN CAPITAL AGENCY CORP.

CFO CERTIFICATE

Pursuant to Section 5(e) and Section 5(k)(iii), if applicable, of the Underwriting Agreement, dated January \_\_, 2011 (the "Underwriting Agreement"), by and among American Capital Agency Corp., a Delaware corporation (the "Company"), and American Capital Agency Management, LLC, a Delaware limited liability company, on the one hand, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC, as representatives of the several underwriters named in Schedule I thereto, on the other hand, the undersigned, John R. Erickson, Executive Vice President and Chief Financial Officer of the Company, hereby certifies that:

1. As the Company's Executive Vice President and Chief Financial Officer, (A) I am responsible for the Company's accounting and financial matters, (B) I am familiar with the Company's financial statements and internal accounting records and (C) I am familiar with and responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)).

2. (A) I have been actively involved in the preparation of the financial data included in the Preliminary Prospectus; (B) I have reviewed the statements appearing under the caption "Prospectus Summary — Recent Developments" in the Preliminary Prospectus (the "Recent Developments"), including the financial data contained therein as circled and attached hereto as Exhibit A (the "Financial Data" and, together with the Recent Developments, the "Disclosure"), (C) I or Company personnel under my supervision have performed certain procedures to confirm the reasonableness of the Financial Data based on the Company's best currently available information and estimates, (D) the Disclosure was true, accurate and correct in all material respects as of the Applicable Time, and (E) the Financial Data is based upon the Company's assessment and analysis of all factors it deems relevant, including the application of adjustments that have been or are expected to be recorded in connection with the preparation of the Company's financial statements for the quarter and year ended December 31, 2010, which adjustments it deems reasonable after due and proper consideration of all relevant facts for the quarter and year ended December 31, 2010.

Unless otherwise defined herein, capitalized terms used in this certificate shall have the meanings ascribed to them in the Underwriting Agreement.

This certificate is to assist the Underwriters and their counsel in conducting and documenting their investigation of the affairs of the Company in connection with the offer and sale of the Securities. Each of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Company, and Hunton & Williams LLP, counsel to the Underwriters, is entitled to rely on this certificate in connection with the opinions that each firm is rendering pursuant to the Underwriting Agreement.

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[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of this \_\_ day of January, 2011.

By: \_\_\_\_\_  
Name: John R. Erickson  
Title: Executive Vice President and Chief Financial  
Officer

*[Signature page to CFO Certificate of the Company]*



FORM OF LOCK-UP AGREEMENT  
TO BE DELIVERED PURSUANT TO SECTION 5(j)

January 10, 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Deutsche Bank Securities Inc.  
UBS Securities LLC

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

As Representatives of the several Underwriters

Re: Proposed Public Offering by American Capital Agency Corp.

Dear Sirs:

The undersigned, an officer and/or director or the manager of American Capital Agency Corp., a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC (in such capacity, the "Representatives") propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company and American Capital Agency Management, LLC, a Delaware limited liability company and the manager of the Company (the "Manager"), providing for the public offering of shares of the Company's common stock, \$0.01 par value per share ("Common Stock"). In recognition of the benefit that such an offering will confer upon the undersigned as an officer and/or director or the manager of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with the Representatives that, during a period of 30 days following the date of the Underwriting Agreement, the undersigned will not, without the prior written consent of the Representatives, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any of the shares of Common Stock or any securities convertible into or exchangeable or exercisable for shares of Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition, or file, or cause to be filed, any registration statement under the Securities Act of 1933, as amended, with respect to

any of the foregoing (collectively, the “Lock-Up Securities”) or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of shares of Common Stock or other securities, in cash or otherwise.

For the avoidance of doubt, nothing contained herein shall prevent the undersigned from, or restrict the ability of the undersigned to, (i) purchasing shares of Common Stock or other securities of the Company, (ii) exercising any options or other convertible securities granted under any benefit plan of the Company; provided, that any shares of Common Stock received upon exercise of such options or other convertible securities shall be subject to the foregoing restrictions, or (iii) causing to be filed one or more registration statements under the Securities Act, including amendments and supplements thereto, with respect to the Company’s Direct Stock Purchase Program and Dividend Reinvestment Program, and authorizing or effecting the sale by the Company of any shares of Common Stock registered pursuant thereto; *provided that* the undersigned shall not grant any purchase volume waivers under such plan during the period of 30 days from the date of the Underwriting Agreement.

Notwithstanding the foregoing, the undersigned may make gifts or transfers of Common Stock to, or for the benefit of, family members, charitable institutions, and trusts, limited partnerships or other entities created for estate planning purposes, the principal beneficiaries of which are family members or charitable institutions, subject to the condition that any such family member or charitable institution or other holder shall execute an agreement with the Representatives stating that such transferee is receiving and holding the shares of Common Stock subject to the provisions of this lock-up agreement. In addition, if the undersigned is a corporation, partnership, limited liability company or other entity, the undersigned may transfer shares of Common Stock to persons or other entities that own equity interests in the undersigned, subject to the condition that the recipient shall execute an agreement with the Representatives stating that such recipient is receiving and holding the shares of Common Stock subject to the provisions of this lock-up agreement.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the Lock-Up Securities, except in compliance with the foregoing instructions.

THIS LOCK-UP AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

*[Signature page follows.]*

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Very truly yours,

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNDERWRITING AGREEMENT**

**AMERICAN CAPITAL AGENCY CORP.**

**(a Delaware corporation)**

**28,000,000 Shares of Common Stock**

**Dated: March 21, 2011**

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**AMERICAN CAPITAL AGENCY CORP.**

**(a Delaware corporation)**

**28,000,000 Shares of Common Stock**

**(Par Value \$0.01 Per Share)**

**UNDERWRITING AGREEMENT**

March 21, 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

As Representatives of the several Underwriters

Ladies and Gentlemen:

American Capital Agency Corp., a Delaware corporation (the "Company") and American Capital Agency Management, LLC, a Delaware limited liability company and manager of the Company (the "Manager"), confirm their agreement with each of the Underwriters named in Schedule I hereto (collectively, the "Underwriters," which term shall also include any underwriter hereinafter substituted as provided in Section 10 hereof), for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, and Deutsche Bank Securities Inc. are acting as representatives (in such capacity, if and as applicable, the "Representatives"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of 28,000,000 shares of common stock, par value \$0.01 per share, of the Company ("Common Stock") and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 4,200,000 additional shares of Common Stock to cover over allotments, if any. The aforesaid 28,000,000 shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the 4,200,000 shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are hereinafter called, collectively, the "Securities."

The Company and the Manager understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

Section 1. Representations and Warranties.

(a) Representations and Warranties by the Company. The Company represents and warrants to each Underwriter as of the date hereof, as of the Applicable Time referred to in Section 1(a)(iii) hereof, as of the Closing Time referred to in Section 2(c) hereof, and as of each Date of Delivery (if any) referred to in Section 2(b) hereof, and agrees with each Underwriter, as follows:

(i) Compliance with Registration Requirements. The Company has filed with the Securities and Exchange Commission (the "Commission") a shelf registration statement on Form S-3 (File No. 333-170374) under the Securities Act of 1933, as amended (the "1933 Act"), in respect of the Common Stock (including the Securities) on November 4, 2010, which contains a base prospectus, to be used in connection with the public offering and sale of the Securities; the Company satisfies all eligibility requirements for use of Form S-3 as contemplated by such registration statement and this Agreement; such registration statement became effective under the 1933 Act upon filing; the Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information with respect to such registration statement or otherwise; no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company, threatened by the Commission, and no notice of objection of the Commission to the use of such form of registration statement or any post-effective amendment thereto has been received by the Company (the base prospectus filed as part of such registration statement, in the form in which it was filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"); the various parts of such registration statement, including all exhibits thereto and any prospectus supplement or prospectus relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B under the 1933 Act to be part of such registration statement (any such information that was omitted from such registration statement at the time it became effective but that was deemed to be a part and included in such registration statement pursuant to Rule 430B under the 1933 Act is referred to as "430B Information"), each as amended at each time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; each preliminary prospectus used in connection with the offering of the Securities that omitted Rule 430B Information, including the related Basic Prospectus in the form first filed by the Company pursuant to Rule 424(b) under the 1933 Act is herein called, a "Preliminary Prospectus"; the final prospectus supplement specifically relating to the Securities prepared and filed with the Commission pursuant to Rule 424(b) under the 1933 Act is hereinafter called the "Prospectus Supplement"; the Basic Prospectus, as amended and supplemented by the Prospectus Supplement, is hereinafter called the "Prospectus"; any reference herein to the Basic Prospectus, each Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act; provided, however, that no representation or warranty included in any exhibit

to any such incorporated document, other than the representations and warranties contained herein, is deemed to be made to you; any reference to any amendment or supplement to the Basic Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement or base prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the 1933 Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and incorporated therein, in each case after the date of the Basic Prospectus, each Preliminary Prospectus or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement.

(ii) No order preventing or suspending the use of the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and the Registration Statement, the Basic Prospectus, each Preliminary Prospectus and the Prospectus, at the time of filing thereof and at the time it became effective, as applicable, conformed in all material respects to the requirements of the 1933 Act and the rules and regulations of the Commission thereunder (the "1933 Act Regulations") and did not and will not as of the Closing Time and each Date of Delivery (if any) contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(iii) For the purposes of this Agreement, the "Applicable Time" means 5:30 p.m. (New York City time) on March 21, 2011; the applicable Issuer General Use Free Writing Prospectus(es) issued at or prior to the Applicable Time and each Preliminary Prospectus issued at or prior to the Applicable Time, as most recently amended or supplemented immediately prior to the Applicable Time, taken together (collectively, and, with respect to any Securities, together with the information included on Schedule II hereto, all considered together, the "General Disclosure Package") as of the Applicable Time, the Closing Time and each Date of Delivery (if any), does not and will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each such Issuer Limited Use Free Writing Prospectus, as supplemented by and taken together with the General Disclosure Package as of such Applicable Time, the Closing Time and each Date of Delivery (if any), will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this subsection and elsewhere in this Agreement:

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the 1933 Act Regulations ("Rule 433"), relating to the Securities that (i) is required to be filed with the Commission by the Company, (ii) is a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not

required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule III hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

(iv) Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Representatives as described in Section 3(e), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, any Preliminary Prospectus, the Prospectus Supplement, the Prospectus, or other prospectus deemed to be a party thereof (including any document incorporated by reference therein) that has not been superseded or modified.

(v) Incorporation of Documents by Reference. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time they were or hereinafter filed with the Commission, as the case may be, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder (the “1934 Act Regulations”).

(vi) Ineligible Issuer. As of the date of this Agreement (with such date being used as the determination date for purposes of this clause), the Company is not an ineligible issuer (as defined in Rule 405 under the 1933 Act), without taking account of any determination by the Commission pursuant to Rule 405 under the 1933 Act that it is not necessary that the Company be considered an ineligible issuer (as defined in Rule 405 under the 1933 Act).

(vii) Independent Accountants. Ernst & Young LLP, who certified the financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, is an independent public accounting firm as required by the 1933 Act and the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations, and the Public Company Accounting Oversight Board (United States).

(viii) Financial Statements. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) applied on a



consistent basis throughout the periods involved. The selected financial data incorporated by reference in the General Disclosure Package and the Prospectus present fairly the information shown therein and was compiled on a basis consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement. Any disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G under the 1934 Act and Item 10 of Regulation S-K under the 1933 Act, to the extent applicable.

(ix) No Material Adverse Change in Business. Since the respective dates as of which information is given in the General Disclosure Package or the Prospectus (in each case exclusive of any amendments or supplements thereto subsequent to their respective dates), except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings and business affairs or business prospects of the Company together with its consolidated subsidiaries, all of which are listed on Schedule IV attached hereto (each, a “Subsidiary,” and collectively, the “Subsidiaries”), considered as one enterprise, whether or not arising in the ordinary course of business (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its Subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its Subsidiaries considered as one enterprise, (C) there has been no obligation, contingent or otherwise, directly or indirectly incurred by the Company or any of its Subsidiaries considered as one enterprise that could reasonably be likely to have a Material Adverse Effect and (D) except for regular quarterly dividends on the Common Stock in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(x) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure, individually or in the aggregate, so to qualify or to be in good standing would not result in a Material Adverse Effect.

(xi) Good Standing of Subsidiaries. Each Subsidiary is duly incorporated or organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with requisite power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, and to consummate the transactions contemplated hereby. Each Subsidiary is duly qualified as a foreign corporation, limited liability company, partnership or trust to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except

where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect; except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, all of the issued and outstanding equity interests in each Subsidiary have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company, directly or indirectly, free and clear of any security interests, mortgages, pledges, liens, encumbrances, claims or equitable interests; none of the outstanding equity interests in any Subsidiary was issued in violation of, or subject to, any preemptive right, co-sale right, registration right, right of first refusal or other similar rights of equity holders or any other person arising by operation of law, under the organizational documents of each Subsidiary, under any agreement to which any Subsidiary is a party or otherwise. The Company does not own or control, directly or indirectly, any equity interest in any corporation, joint venture, limited liability company, association or other entity other than the Subsidiaries. The Company does not, and did not as of December 31, 2010, have any "significant subsidiaries" (as defined in Rule 1-02(w) of Regulation S-X).

(xii) Capitalization. As of March 18, 2011, (A) 150,000,000 shares of Common Stock were authorized for issuance, of which 96,628,759 shares were issued and outstanding and (B) 10,000,000 shares of preferred stock, par value \$0.01 per share of the Company were authorized for issuance, none of which were issued or outstanding. The issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock was issued in violation of the preemptive or other similar rights of any securityholder of the Company. Upon completion of the issuance and sale of the Securities pursuant to this Agreement, the capitalization of the Company will be as set forth in the Prospectus in the column entitled "As Adjusted for this offering and shares sold under a Sales Agreement with Cantor Fitzgerald & Co. and shares sold under our DSPP" under the caption "Capitalization." Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there are no outstanding (A) securities or obligations of the Company or any of the Subsidiaries convertible into or exchangeable for any equity interests of the Company or any such Subsidiary, (B) warrants, rights or options to subscribe for or purchase from the Company or any such Subsidiary any such equity interests or any such convertible or exchangeable securities or obligations or (C) obligations of the Company or any such Subsidiary to issue any equity interests, any such convertible or exchangeable securities or obligation, or any such warrants, rights or options. The Company's Common Stock has been registered pursuant to Section 12(b) of the 1934 Act and is authorized for trading on the Nasdaq Global Select Market ("Nasdaq"), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock from Nasdaq, nor has the Company received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing. The Company is in compliance with the current listing standards of Nasdaq.

(xiii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company. This Agreement conforms in all material respects to the description thereof in the Registration Statement, the General Disclosure Package and the Prospectus.

(xiv) Description of Securities. The Securities conform to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and such descriptions conform to the rights set forth in the instruments defining the same; no holder of the Securities will be subject to personal liability by reason of being such a holder.

(xv) Absence of Defaults and Conflicts. The Company is not in violation of its Amended and Restated Certificate of Incorporation (“Charter”) or its Amended and Restated Bylaws (“Bylaws”). No Subsidiary is in violation of its organizational documents (including, without limitation, partnership and limited liability company agreements). Neither the Company nor any of its Subsidiaries is in default in the performance or observance (nor has any event occurred which with notice, lapse of time or both would constitute a default in the observance or performance) of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary may be bound, or to which any of the property or assets of the Company or any Subsidiary is subject (collectively, “Agreements and Instruments”), except for such defaults that would not result in a Material Adverse Effect; and the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated herein (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Registration Statement, the General Disclosure Package and the Prospectus under the caption “Use of Proceeds”) and compliance by the Company with its obligations hereunder and thereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any Subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the Charter or Bylaws of the Company or the organizational documents of any Subsidiary (including, without limitation, partnership and limited liability company operating agreements), any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any Subsidiary or any of their assets, properties or operations. As used herein, a “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any Subsidiary.

(xvi) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company (without further inquiry), threatened, against or affecting the Company or any Subsidiary, which is required to be disclosed in the Registration Statement, the General Disclosure Package or the Prospectus (other than as disclosed therein), or which would reasonably be expected to result in a Material Adverse Effect, or which would reasonably be expected to materially and

adversely affect the properties or assets thereof or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; the aggregate of all pending legal or governmental proceedings to which the Company or any Subsidiary is a party or of which any of their respective property or assets is the subject which are not described in the Registration Statement, including ordinary routine litigation incidental to the business, would not, individually or in the aggregate, result in a Material Adverse Effect.

(xvii) Accuracy of Exhibits. There are no contracts or documents that are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto which have not been described in all material respects and filed as required by Item 601(b) of Regulation S-K under the 1933 Act. The copies of all contracts, agreements, instruments and other documents (including governmental licenses, authorizations, permits, consents and approvals and all amendments or waivers relating to any of the foregoing) that have been furnished to the Underwriter or its counsel are complete and genuine and include all material collateral and supplemental agreements thereto.

(xviii) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is required in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws or the rules of the Financial Industry Regulatory Authority, Inc. (the "FINRA").

(xix) Absence of Manipulation. Other than permitted activity pursuant to Regulation M under the 1934 Act, neither the Company nor any of its affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate"), has taken, nor will the Company or any of its Affiliates take, directly or indirectly, any action that is designed to, has constituted or would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xx) Possession of Licenses and Permits. The Company and its Subsidiaries possess such permits, licenses, approvals, consents and other authorizations issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them as described in the Registration Statement, the General Disclosure Package and the Prospectus (collectively, the "Intangibles"), except where the failure so to possess is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect; the Company and its Subsidiaries are in compliance with the terms and conditions of all such Intangibles, except where the failure so to comply would not, individually or in the aggregate, result in a Material Adverse Effect; all of the Intangibles are valid and in full force and effect, except when the invalidity of such Intangibles or the failure of such Intangibles to be in full force and effect is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect; the Company and its Subsidiaries have not received any notice of proceedings relating to the revocation or modification of any such Intangibles which,

individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would be reasonably likely to result in a Material Adverse Effect; the Company and its Subsidiaries have not violated or received written notice of any infringement of or conflict with (and the Company does not know of any such infringement of or conflict with) asserted rights of others with respect to any such Intangibles, except where the infringement of or conflict with is not reasonably likely to, individually or in the aggregate, result in a Material Adverse Effect.

(xxi) Personal Property. Neither the Company nor any Subsidiary owns any real property or holds any real property lease. The Company and its Subsidiaries have good title to all personal property, if any, owned by them, in each case, free and clear of all liens, security interests, pledges, charges, encumbrances, mortgages and defects, except as are disclosed in the Registration Statement, the General Disclosure Package and the Prospectus or as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(xxii) Investment Company Act. The Company is not required to register as an “investment company” under the Investment Company Act of 1940, as amended (the “1940 Act”).

(xxiii) Registration Rights. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus or which have been waived, there are no persons with registration or other similar rights to have any equity or debt securities, including securities that are convertible into or exchangeable for equity securities, registered pursuant to the Registration Statement or otherwise registered by the Company under the 1933 Act; no person has a right of participation, first refusal or similar right with respect to the sale of the Securities by the Company.

(xxiv) Accounting Controls and Disclosure Controls. The Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) receipts and expenditures are being made only in accordance with management’s general or specific authorization; (D) access to assets is permitted only in accordance with management’s general or specific authorization; and (E) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, the General Disclosure Package and the Prospectus, since the end of the Company’s most recent audited fiscal year, there has been (A) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (B) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting. The Company and its Subsidiaries, considered as one enterprise, have established and currently maintain disclosure controls and procedures that comply with Rule 13a-15 under the 1934 Act and the Company has determined that such disclosure controls and procedures are effective in compliance with Rule 13a-15 under the Exchange Act.

(xxv) No Commissions. Neither the Company nor any of its Subsidiaries is a party to any contract, agreement or understanding with any person (other than as contemplated by this Agreement) that would give rise to a valid claim against the Company or any of its Subsidiaries or the Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities by the Underwriter under this Agreement.

(xxvi) Actively-Traded Security. The Common Stock is an "actively-traded security" exempted from the requirements of Rule 101 of Regulation M under the 1934 Act by subsection (c)(1) of such rule.

(xxvii) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxviii) Payment of Taxes. All tax returns of the Company and its Subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not result in a Material Adverse Effect.

(xxix) Absence of Transfer Taxes. There are no transfer taxes or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement or the sale by the Company of the Securities under this Agreement.

(xxx) Insurance. The Company and its Subsidiaries carry or are entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by companies of established repute engaged in the same or similar business, and all such insurance is in full force and effect. The Company has no reason to believe that it or any Subsidiary will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither the Company nor any Subsidiary has been denied any material insurance coverage which it has sought or for which it has applied.

(xxxi) Statistical and Market-Related Data. The statistical and market-related data included in the Registration Statement, the General Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate as of the respective dates of such documents, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(xxxii) Foreign Corrupt Practices Act. None of the Company, any Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or other person acting on behalf of the Company or any of its Subsidiaries, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA. The Company and the Subsidiaries have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxiii) Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxiv) OFAC. None of the Company, any Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or person acting on behalf of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxv) Related Party Transactions. No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries on the one hand, and the directors, officers, trustees, managers, stockholders, partners, customers or suppliers of the Company or any of the Subsidiaries on the other hand, which would be required by the 1933 Act or by the 1933 Regulations to be described in the Registration Statement, the General Disclosure Package and the Prospectus, which is not so described.

(xxxvi) Noncompetition; Nondisclosure. Neither the Company nor any officer of the Company is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar arrangement that would be violated by the present or proposed business activities of the Company as described in the Registration Statement, the General Disclosure Package and the Prospectus.

(xxxvii) Pending Proceedings and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(xxxviii) REIT Status. Commencing with its initial taxable year ended December 31, 2008, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (collectively, the “Code”), and the Company’s current and proposed method of operations as described in the Registration Statement, the General Disclosure Package and the Prospectus will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2011 and thereafter. No transaction or other event has occurred that could cause the Company to not be able to qualify as a REIT for its taxable year ending December 31, 2011 or future taxable years. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, the Company and each of its Subsidiaries have no intention of changing their operations or engaging in activities that would cause the Company to fail to qualify, or make economically undesirable the Company’s continued qualification, as a REIT under the Code.

(xxxix) Tax Opinion. With respect to each legal opinion as to Federal income tax matters provided to the Underwriters pursuant to Section 5(b) hereof, the Company’s representatives have discussed with its counsel, Skadden, Arps, Slate, Meagher & Flom LLP, the officer’s certificate supporting each such opinion, and where representations in such officer’s certificate involve terms defined in the Code, the Treasury regulations thereunder, published rulings of the Internal Revenue Service or other relevant authority, the Company’s representatives are satisfied after their discussions with their counsel in their understanding of such terms and are capable of making such representations.

(xl) Description of Organization and Method of Operations. The description of the Company’s organization and current and proposed method of operations and its qualification and taxation as a REIT set forth in the Registration Statement, the General Disclosure Package and the Prospectus is accurate in all material respects and presents fairly the matters referred to therein. The Company’s conflicts of interest, operating policies, investment guidelines and operating restrictions described or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus accurately reflect in all material respects the guidelines and policies of the Company with respect to the operation of its business, and no material deviation from such guidelines or policies is currently contemplated.

(xli) Director Independence. Each of the independent directors (or independent director nominees, once appointed, if applicable) named in the Registration Statement, the General Disclosure Package and Prospectus satisfies the independence standards established by Nasdaq and, with respect to members of the Company’s audit committee, the enhanced independence standards contained in Rule 10A-3(b)(1) promulgated by the Commission under the 1934 Act.



(xlii) Broker/Dealer Status. The Company is not required to register as a “broker” or “dealer” in accordance with the provisions of the rules and the 1934 Act Regulations and does not, directly or indirectly through one or more intermediaries, control or have any other association with (within the meaning of Article I of the By-laws of the FINRA) any member firm of the FINRA. No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers or stockholders of the Company, on the other hand, which is required by the rules of the FINRA to be described in the Registration Statement, the General Disclosure Package and the Prospectus, which is not so described.

(xliii) Dividends/Distributions. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, no Subsidiary is currently prohibited, directly or indirectly, from paying any dividends or distributions to the Company to the extent permitted by applicable law, from making any other distribution on such Subsidiary’s issued and outstanding capital stock or other equity interests, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of the property or assets of such Subsidiary to the Company.

(b) Representations and Warranties by the Manager. The Manager represents and warrants to each Underwriter as of the date hereof as of the Applicable Time, as of the Closing Time, and, as of each such Date of Delivery (if any) and agrees with each Underwriter, as follows:

(i) Good Standing of the Manager. The Manager has been duly formed and is validly existing as a limited liability company in good standing under the laws of the State of Delaware and has power and authority to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Manager is duly qualified as a foreign limited liability company to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(ii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Manager and constitutes a valid and binding agreement of the Manager enforceable in accordance with its terms, except in each case as may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or thereafter in effect relating to creditors’ rights generally and (B) general equitable principles and the discretion of the court before which any proceeding therefor may be brought.

(iii) Absence of Defaults and Conflicts. The Manager is not in violation of its organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Manager is a party or by which it may be bound, or to which any of the property or assets of the Manager is subject (collectively, the “Manager Agreements and Instruments”), or in violation of any law, statute, rule, regulation, judgment, order or decree, except for such violations or except for such defaults that

would not result in a material adverse effect on the condition, financial or otherwise, or in the business affairs, business prospects or regulatory status of the Manager, whether or not arising in the ordinary course of business, or that would otherwise prevent the Manager from carrying out its obligations under this Agreement (a “Manager Material Adverse Effect”). The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus and compliance by the Manager with its obligations under this Agreement do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Manager pursuant to the Manager Agreements and Instruments, nor will such action result in any violation of the provisions of the limited liability company operating agreement or other organizational documents of the Manager or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Manager or any of its assets, properties or operations, except as would not result in a Manager Material Adverse Effect.

(iv) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Manager, threatened, against or affecting the Manager, except for such matters that could not, individually or in the aggregate, result in a Manager Material Adverse Effect.

(v) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is required in connection with the offering or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws or the rules of the FINRA.

(vi) Financial Resources. The Manager has the financial and other resources available to it necessary for the performance of its services and obligations as contemplated in the Registration Statement, the General Disclosure Package and the Prospectus and under this Agreement and the Management Agreement between the Company and the Manager, dated May 20, 2008 (the “Management Agreement”).

(vii) Possession of Licenses and Permits. The Manager possesses such Intangibles issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, except where the failure so to possess would not, individually or in the aggregate, result in a Manager Material Adverse Effect; the Manager is in compliance with the terms and conditions of all such Intangibles, except where the failure so to comply would not, individually or in the aggregate, result in a Manager Material Adverse Effect; all of the Intangibles are valid and in full force and effect, except when the invalidity of such Intangibles or the failure of such Intangibles to be in full force and effect would not have a Manager Material Adverse Effect; and the Manager has not received any notice of proceedings relating to the revocation or modification of any such Intangibles which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Manager Material Adverse Effect.

(viii) Employment; Noncompetition; Nondisclosure. Except for any transfer of employees of ACAS to the Manager or as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, the Manager has not been notified that any executive officer of the Company or the Manager plans to terminate his or her employment with the Manager or ACAS, as applicable.

(ix) Investment Advisers Act. The Manager is not prohibited by the Investment Advisers Act of 1940, as amended (the "Advisers Act"), or the rules and regulations thereunder, from performing its obligations under the Management Agreement as described in the Registration Statement, the General Disclosure Package and the Prospectus; and the Manager is not registered and is not required to register as an investment adviser under the Advisers Act.

Section 2. Sale and Delivery to Underwriters; Closing.

(a) Initial Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at a price of \$27.72 per share of Common Stock, the number of Initial Securities set forth in Schedule I opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional securities.

(b) Option Securities. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 4,200,000 shares of Common Stock, at the price per share set forth in paragraph (a) above. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part at any time on or before the 30th day after the date hereof only for the purpose of covering overallotments, which may be made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule I opposite the name of such Underwriter bears to the total number of Initial Securities, subject in each case to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) Payment. The Securities shall be delivered by the Company to the Representatives, including, at the option of the Representatives, through the facilities of DTC for the account of the Representatives, against payment by the Representatives of the purchase price

therefor by wire transfer of immediately available funds to a bank account designated by the Company. The time and date of such delivery and payment shall be 10:00 a.m. (New York City time) on the third (fourth, if the pricing occurs after 4:30 p.m. (New York City time) on any given day) business day after the date hereof, or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Section 3. Covenants of the Company and the Manager. The Company and the Manager covenant with each Underwriter as follows:

(a) Compliance with Securities Regulations and Commission Requests. The Company, subject to Section 3(b) hereof, will comply with the requirements of Rule 430B and will notify the Representatives promptly, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall have been declared effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or of any order preventing or suspending the use of any Preliminary Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect the filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)). The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Filing of Amendments and Exchange Act Documents. The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement or any amendment, supplement or revision to any Preliminary Prospectus or to the Prospectus, whether pursuant to the 1933 Act, the 1934 Act or otherwise, and the Company will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object, except as required by law. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the execution of this Agreement; the Company will give the Representatives notice of its intention to make any such filing from the execution of this Agreement to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing and will not file or use any such document to which the Representatives or counsel for the Representatives shall reasonably object, except as required by law.

(c) Delivery of Registration Statements. Upon request, the Company will furnish or will deliver to the Representatives and counsel for the Underwriters, without charge, conformed copies of the Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and conformed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”), except to the extent permitted by Regulation S-T.

(d) Delivery of Prospectuses. The Company has delivered to each Underwriter, without charge, as many copies of each Preliminary Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) Continued Compliance with Securities Laws. The Company will comply with the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be necessary to correct such statement or omission or to comply with such requirements, the Company will use its best efforts to have such amendment declared effective as soon as practicable (if it is not an automatic shelf registration statement with respect to the Securities) and the Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the General Disclosure Package or the Prospectus, or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) Blue Sky Qualifications. The Company will use its best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect for a period of not less than one year from the date hereof; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(g) Rule 158. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its security holders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(h) Use of Proceeds. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Prospectus under "Use of Proceeds."

(i) Listing. The Company will use its best efforts to effect and maintain the quotation of the Securities on Nasdaq.

(j) Restriction on Sale of Securities. During a period of 30 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the shares of Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of shares of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the (A) Securities to be sold hereunder, (B) any shares of Common Stock sold pursuant to the Company's Direct Stock Purchase Program and Dividend Reinvestment Program; *provided that* the Company shall not grant any purchase volume waivers under such plan during the period of 30 days from the date of the Prospectus, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company or (D) any shares of Common Stock issued pursuant to any non-employee director stock plans or dividend reinvestment plans.

(k) Issuer Free Writing Prospectuses. Each of the Company and the Manager represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company, the Manager and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute an "issuer free writing prospectus," as defined in Rule 433, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company, the Manager and the Representatives is hereinafter referred to as a "Permitted Free Writing Prospectus." Each of the Company and the Manager represents that it has treated or agrees that

it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

(l) Share Price Manipulation. Each of the Company and the Manager agrees that it will not, and will cause its respective officers and directors (and in the case of the Manager, ACAS) and their respective subsidiaries not to, take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities to facilitate the sale or resale of the Securities, provided that the Company may bid for and purchase its Common Stock in accordance with Rule 10b-18 under the 1934 Act.

(m) REIT Qualification. The Company will use its best efforts to continue to meet the requirements for qualification and taxation as a REIT under the Code, subject to any future determination by the Company’s board of directors that it is no longer in the Company’s best interests to qualify as a REIT.

(n) Investment Company Act. The Company will use its best efforts to conduct its affairs and the affairs of its Subsidiaries in such a manner so as to ensure that neither the Company nor any of its Subsidiaries will be an “investment company” (as defined in the Investment Company Act of 1940 (the “1940 Act”)) or an entity “controlled” by an investment company that is required to be registered under the 1940 Act.

(o) Undertakings. The Company will comply with all of the provisions of any undertakings in the Registration Statement.

(p) Transfer Agent. The Company has engaged and will maintain, at its sole expense, a registrar and transfer agent for the Securities.

(q) Liability Insurance. The Company will obtain or maintain, as appropriate, directors and officers liability insurance in an amount deemed advisable by the Company in its reasonable discretion.

#### Section 4. Payment of Expenses.

(a) Expenses. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Securities, if any, to the Underwriters, including any applicable stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel and accountants, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky Survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each Preliminary Prospectus, any

Permitted Free Writing Prospectus and of the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (vii) the fees and expenses of any transfer agent or registrar for the Securities, (viii) the reasonable costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including, expenses associated with the production of road show slides and graphics, but excluding travel and reasonable lodging expenses of the Underwriters and representatives and officers of the Company (which shall be paid by the Underwriters), and (ix) any filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with the review by FINRA of the terms of the sale of the Securities (subject to a maximum of \$10,000) and (x) the fees and expenses incurred in connection with the quotation of the Securities on Nasdaq.

(b) Termination of Agreement. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, (including the reasonable fees and disbursements of counsel for the Underwriters) actually incurred in connection with the proposed purchase and the public offering and sale of the Securities.

Section 5. Conditions of Underwriters' Obligations. The obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company and the Manager contained in Section 1 hereof or in certificates of any officer of the Company or any subsidiary of the Company or the Manager delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) Effectiveness of Registration Statement; Filing of Prospectus; Payment of Filing Fee. The Registration Statement became effective and at the Closing Time no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefore initiated or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. A prospectus containing the Rule 430B Information shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) without reliance on Rule 424(b)(8) (or a post-effective amendment providing such information shall have been filed and have been declared effective in accordance with the requirements of Rule 430B). The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by the 1933 Act Regulations.

(b) Opinion of Counsel for Company. At Closing Time, the Representatives shall have received the favorable opinions, dated as of Closing Time, of Skadden, Arps, Slate, Meagher & Flom LLP, in form and substance satisfactory to counsel for the Underwriters to the effect set forth in Exhibit A and Exhibit B hereto and to such further effect as counsel to the Underwriters may reasonably request.

(c) Opinion of Counsel for Underwriters. At the Closing Time, the Representatives shall have received the favorable opinion, dated as of the Closing Time, of Hunton & Williams LLP with respect to the matters the Underwriters reasonably request. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company, the Manager and certificates of public officials.



(d) Officers' Certificates. At Closing Time, there shall not have been, since the date hereof, since the Applicable Time or since the respective dates as of which information is given in the Prospectus or the General Disclosure Package, any Material Adverse Effect or Manager Material Adverse Effect. The Underwriters shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of Closing Time, to the effect that (i) there has been no such Material Adverse Effect, (ii) the representations and warranties in Section 1(a) hereof are true and correct with the same force and effect as though expressly made at and as of Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, contemplated by the Commission. The Representatives shall have also received a certificate of the President of the Manager and of the Treasurer of the Manager, dated as of the Closing Time, to the effect that (i) there has been no Manager Material Adverse Effect, (ii) the representations and warranties in Section 1(b) hereof are true and correct with the same force and effect as though expressly made at and as of the Closing Time and (iii) the Manager has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time.

(e) Accountant's Comfort Letter. At the time of the execution of this Agreement, the Underwriter shall have received from Ernst & Young LLP a letter dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letters for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus. Such letters shall address the audited financial statements, any unaudited interim financial statements (including a statement that such unaudited financial statements have been reviewed in accordance with the standards established under Statement on Auditing Standards No. 100) and any pro forma financial statements and also shall provide customary negative assurances.

(f) Bring-down Comfort Letter. At Closing Time, the Representatives shall have received from Ernst & Young LLP a letter, dated as of Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section 5, except that the specified date referred to shall be a date not more than three business days prior to Closing Time.

(g) Approval of Listing. At Closing Time, the Securities shall have been approved for quotation on Nasdaq.

(h) No Objection. FINRA shall have not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(i) Lock up Agreements. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit C hereto signed by the persons and entities listed on Schedule V.

(j) Conditions to Purchase of Option Securities. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company and the Manager contained herein and the statements in any certificates furnished by the Company and the Manager hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the Chief Financial Officer or chief accounting officer of the Company confirming that the certificate delivered by the Company at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Officers' Certificate. A certificate, dated such Date of Delivery, of the President of the Manager and of the Treasurer of the Manager confirming that the certificate delivered by the Manager at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(iii) Opinion of Counsel for Company. The favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and the Manager, each in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinions required by Section 5(b) hereof.

(iv) Opinion of Counsel for Underwriters. The favorable opinion of Hunton & Williams LLP, special counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(v) Bring-down Comfort Letter. A letter from Ernst & Young LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(f) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three days prior to such Date of Delivery.

(k) Additional Documents. At the Closing Time and at each Date of Delivery, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling it to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

(l) Termination of Agreement. If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to the

Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party, except as provided in Section 4(b) and except that this paragraph and Sections 1, 6, 7 and 8 shall survive any such termination and remain in full force and effect.

Section 6. Indemnification.

(a) Indemnification of Underwriters. The Company agrees to indemnify and hold harmless each Underwriter, its Affiliates, its selling agents and each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), and including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any Preliminary Prospectus and the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Issuer Limited Use Free Writing Prospectus or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(iii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(e) below) any such settlement is effected with the written consent of the Company;

(iv) against any and all expense (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with the Underwriter Content.

(b) Indemnification of Company, Directors and Officers. Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section 6, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement, the General Disclosure Package or the Prospectus in reliance upon and in conformity with the Underwriter Content. The Company hereby acknowledges that the only information that the Underwriters have furnished to the Company expressly for use in the Registration Statement, the General Disclosure Package or the Prospectus are the statements set forth under the caption "Underwriting" in such documents as follows: the first sentence of paragraph 4, the first sentence of paragraph 10, and the third and fourth sentences of paragraph 11, each relating to price stabilization activities and paragraph 12 relating to electronic prospectus delivery (collectively, the "Underwriter Content").

(c) Actions Against Parties; Notification. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party, representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) Settlement without Consent if Failure to Reimburse. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 6(d) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

Section 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus bear to the aggregate public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, (i) no Underwriter shall be required to contribute an amount in excess of the underwriting discounts and commissions applicable to the Securities purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company.

The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule I hereto and not joint.

Section 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or the Manager submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company, the person controlling the Manager and (ii) delivery of and payment for the Securities.

Section 9. Termination of Agreement.

(a) Termination; General. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the General Disclosure Package or the Prospectus (exclusive of any supplement thereto), any Material Adverse Effect or Manager Material Adverse Effect, the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any material and adverse change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the

Underwriter, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or Nasdaq, or if trading generally on the New York Stock Exchange or The NASDAQ Stock Market, Inc. has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States such that settlement and clearance of the sale of the Securities is impracticable or impossible, or (v) if a banking moratorium has been declared by either federal or New York State authorities.

(b) Liabilities and Expenses. If this Agreement is terminated pursuant to this Section 9, (i) such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that this paragraph and Sections 1, 6, 7 and 9(a) shall survive such termination and remain in full force and effect, and (ii) the Underwriters shall only be entitled to receive out-of-pocket expenses actually incurred.

Section 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement, or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Company to sell the Option Securities to be purchased and sold on such Date of Delivery, shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

Section 11. Tax Disclosure. Notwithstanding any other provision of this Agreement, from the commencement of discussions with respect to the transactions contemplated hereby, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Sections 6011, 6111 and 6112 of the U.S. Code and the Treasury Regulations promulgated thereunder) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure.

Section 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York, 10013, Attention: Equity Capital Markets Syndicate, with a copy to (which shall not constitute notice) Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attention of Edward W. Elmore, Jr., Esq.; notices to the Company and the Manager shall be directed to each of them at 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814, attention of Secretary, each with a copy to (which shall not constitute notice) Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attention of David J. Goldschmidt, Esq.

Section 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Manager, on the one hand, and the several Underwriters, on the other hand, (ii) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, the Manager, or their respective stockholders, creditors, employees or any other party, (iii) each Underwriter has not assumed and will not assume an advisory or fiduciary responsibility in favor of the Company or the Manager with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Underwriter has advised or is currently advising the Company or the Manager on other matters) and each Underwriter has no obligation to the Company or the Manager with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Underwriters and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of each of the Company and the Manager, and (v) the Underwriters and their respective agents have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company and the Manager have consulted their own respective legal, accounting, regulatory and tax advisors to the extent each deemed appropriate.

Section 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Manager and the Underwriters, or any of them, with respect to the subject matter hereof.



Section 15. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company, the Manager and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company, the Manager and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company, the Manager and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

Section 16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

Section 18. Counterparts. This Agreement 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 Agreement.

Section 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

*[Signature Page Follows.]*

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

Very truly yours,

**AMERICAN CAPITAL AGENCY CORP.**

By: \_\_\_\_\_

Name:

Title:

**AMERICAN CAPITAL AGENCY MANAGEMENT, LLC**

By: \_\_\_\_\_

Name:

Title:

CONFIRMED AND ACCEPTED,  
as of the date first above written:

For themselves and as Representatives of the several Underwriters named in Schedule I hereto.

**MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**CITIGROUP GLOBAL MARKETS INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CREDIT SUISSE SECURITIES (USA) LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DEUTSCHE BANK SECURITIES INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**

<u>Name of Underwriter</u>	<u>Number of Initial Securities</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	6,720,000
Citigroup Global Markets Inc.	6,720,000
Credit Suisse Securities (USA) LLC	6,720,000
Deutsche Bank Securities Inc.	6,720,000
JMP Securities LLC	840,000
Sterne, Agee & Leach, Inc.	280,000
<b>Total</b>	<b><u>28,000,000</u></b>

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**SCHEDULE II**

Information Conveyed at the Applicable Time

Price to Public: Variable

Number of Shares Offered: 28,000,000

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**SCHEDULE III**

Issuer General Use Free Writing Prospectus

None

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**SCHEDULE IV**

List of Subsidiaries

American Capital Agency TRS, LLC, a Delaware limited liability company

**SCHEDULE V**

List of Persons and Entities Subject to Lock Up Agreements

American Capital Agency Management, LLC

Malon Wilkus

John R. Erickson

Samuel A. Flax

Alvin N. Puryear

Morris A. Davis

Gary Kain

Randy E. Dobbs

Larry K. Harvey



## [SUBJECT TO OPINION COMMITTEE REVIEW]

March [25], 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Re: American Capital Agency Corp. – Offering of Common Stock

Ladies and Gentlemen:

This opinion is being furnished to you pursuant to Section 5(b) of the Underwriting Agreement, dated March [22], 2011 (the “Underwriting Agreement”), by and among you (the “Underwriters”), American Capital Agency Corp., a Delaware corporation (the “Company”), and American Capital Agency Management, LLC, a Delaware limited liability company (the “Manager,” and collectively with the Company, the “Opinion Parties,” and each, an “Opinion Party”), relating to the sale by the Company to the Underwriters of [—] shares (the “Firm Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), and up to an additional [—] shares of Common Stock (the “Option Shares”) at the Underwriters’ option to cover over-allotments. The Firm Shares and the Option Shares are collectively referred to herein as the “Securities.”

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

(a) the registration statement on Form S-3 (File No. 333-170374) of the Company relating to the Securities and other securities of the Company filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933 (the "Securities Act") allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Securities Act (the "Rules and Regulations"), including information deemed to be a part of the registration statement pursuant to Rule 430B of the Rules and Regulations (such registration statement, at the time it became effective, being hereinafter referred to as the "Registration Statement");

(b) the prospectus, dated November 4, 2010 (the "Base Prospectus"), which forms a part of and is included in the Registration Statement;

(c) the preliminary prospectus supplement, dated March [21], 2011 (the "Preliminary Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, the "Preliminary 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;

(e) the final prospectus supplement, dated March [22], 2011 (the "Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, 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;

(f) the documents described on Schedule A hereto filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934 and incorporated by reference into the Preliminary Prospectus or the Prospectus, as the case may be, as of the date of the Preliminary Prospectus Supplement or Prospectus Supplement, respectively (the "Incorporated Documents");

(g) an executed copy of the Underwriting Agreement;

(h) a copy of the Amended and Restated Certificate of Incorporation of the Company, certified by the Secretary of State of the State of Delaware as of November 8, 2010, and certified pursuant to the Company's Secretary's Certificate (as defined below);

(i) a copy of the Amended and Restated Bylaws of the Company, as amended and in effect as of the date hereof, certified pursuant to the Company's Secretary's Certificate;

(j) a copy of the resolutions of the Board of Directors of the Company with respect to the Underwriting Agreement and the authorization of the issuance and sale of the Securities, adopted on October 20, 2009 and October 25, 2010, and a copy of the resolutions of the Pricing Committee of the Board of Directors with respect to the issuance and sale of the Securities, adopted on March [21], 2011, certified pursuant to the Company's Secretary's Certificate;

(k) a copy of the Certificate of Formation of the Manager, certified by the Secretary of State of the State of Delaware as of November 8, 2010, and certified pursuant to the Manager's Secretary's Certificate (as defined below);

(l) a copy of the Amended and Restated Limited Liability Company Operating Agreement of the Manager, dated January 3, 2011, entered into by American Capital, LLC and Gary Kain, the members of the Manager, certified pursuant to the Manager's Secretary's Certificate (the "Manager Operating Agreement");

(m) a copy of the written consent of the board of managers of the Manager with respect to the Underwriting Agreement, adopted on March [21], 2011, certified pursuant to the Manager's Secretary's Certificate;

(n) an executed copy of the certificate of Samuel A. Flax, the Secretary and Executive Vice President of the Company and the Secretary and Vice President of the Manager, dated the date hereof (the "Officer's Certificate");

(o) an executed copy of the certificate of Samuel A. Flax, the Secretary of the Company, dated the date hereof (the "Company's Secretary's Certificate");

(p) an executed copy of the certificate of Samuel A. Flax, the Secretary of the Manager, dated the date hereof (the "Manager's Secretary's Certificate");

(q) executed copies of officers' certificates of the Company and the Manager, each dated the date hereof, delivered pursuant to the Underwriting Agreement;

(r) executed copies of incumbency certificates of officers of the Company and the Manager, each dated the date hereof;

(s) an executed copy of the certificate of Gary Kain, the Senior Vice President and Chief Investment Officer of the Company, dated the date hereof, relating to certain matters under the Investment Company Act of 1940, as amended (such Act, the "1940 Act" and such certificate, the "1940 Act Certificate");

(t) an executed copy of the certificate of Samuel A. Flax, the Secretary and Vice President of the Manager, dated the date hereof, relating to certain matters under the Investment Advisers Act of 1940, as amended (such Act, the "Advisers Act" and such certificate, the "Advisers Act Certificate");

(u) an executed copy of the Management Agreement between the Company and the Manager, dated May 20, 2008 (the "Company Scheduled Contract");

(v) an executed copy of the Administrative Services Agreement between the Manager and American Capital, Ltd., dated May 20, 2008 (together with the Company Scheduled Contract, the "Manager Scheduled Contracts");

(w) a certificate, dated March [21], 2011, and a bringdown verification thereof, dated the date hereof, from the Secretary of State of the State of Delaware, with respect to the Company's existence and good standing in the State of Delaware (collectively, the "Company Delaware Certificates"); and

(x) a certificate, dated March [21], 2011, and a bringdown verification thereof, dated the date hereof, from the Secretary of State of the State of Delaware, with respect to the Manager's existence and good standing in the State of Delaware (collectively, the "Manager Delaware Certificates", and collectively with the Company Delaware Certificates, the "Delaware Certificates").

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Opinion Parties and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Opinion Parties and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions set forth below.

In our examination, we have assumed the genuineness of all signatures, including endorsements, 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 photostatic copies, and the authenticity of the originals of such copies. In making our examination of executed documents, we have assumed that the parties thereto, other than the Opinion Parties, had 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. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Opinion Parties and others and of public officials, including the facts set forth in the Officer's Certificate.

We do not express any opinion with respect to the laws of any jurisdiction other than other than (i) the laws of the State of New York, (ii) the General Corporation Law of the State of Delaware (the "DGCL"), (iii) the Delaware Limited Liability Company Act (the "DLLCA") and (iv) the federal laws of the United States of America to the extent referred to specifically herein. Insofar as the opinions expressed herein relate to matters governed by laws other than those set forth in the preceding sentence, we have assumed, without having made any independent investigation, that such laws do not affect any of the opinions set forth herein. The opinions expressed herein are based on laws in effect on the date hereof, which laws are subject to change with possible retroactive effect.

As used herein: "Organizational Documents" means those documents listed in paragraphs (h), (i), (k) and (l) above. "Scheduled Contracts" means the Company Scheduled Contract and the Manager Scheduled Contracts. "Scheduled Orders" means those orders or decrees described on Schedule B and Schedule C hereto. "General Disclosure Package" means the Preliminary Prospectus, as amended and supplemented by the information set forth on Schedule II to the Underwriting Agreement.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions stated herein, we are of the opinion that:

1. Based solely on our review of the Delaware Certificates, each Opinion Party is duly incorporated or duly formed, as applicable, and is validly existing and in good standing under the DGCL or the DLLCA, as applicable.
2. Each Opinion Party has the corporate or limited liability company, as applicable, power and authority to execute and deliver the Underwriting Agreement and to consummate the transactions contemplated thereby under the DGCL or the DLLCA, as applicable.
3. The Underwriting Agreement has been duly authorized, executed and delivered by all requisite corporate or limited liability company, as applicable, action on the part of each Opinion Party under the DGCL or the DLLCA, as applicable.
4. Neither the execution and delivery by either Opinion Party of the Underwriting Agreement nor the consummation by such Opinion Party of the transactions contemplated thereby, including the issuance and sale of the Securities: (i) conflicts with the Organizational Documents of such Opinion Party, (ii) constitutes a violation of, or a default under, any Scheduled Contract to which such Opinion Party is a party or (iii) contravenes any Scheduled Order to which such Opinion Party is subject.

5. Neither the execution and delivery by either Opinion Party of the Underwriting Agreement nor the consummation by such Opinion Party of the transactions contemplated thereby, including the issuance and sale of the Securities: (i) violates any law, rule or regulation of the State of New York, the State of Delaware or the United States of America or (ii) requires the consent, approval, licensing or authorization of, or any filing, recording or registration with, any governmental authority under any law, rule or regulation of the State of New York, the State of Delaware or the United States of America except for those consents, approvals, licenses and authorizations already obtained and those filings, recordings and registrations already made.

6. To our knowledge, there are no legal or governmental proceedings pending to which the Company is a party or to which any property of the Company is subject that are required to be disclosed in the Prospectus and the General Disclosure Package pursuant to Item 103 of Regulation S-K of the Rules and Regulations that are not so disclosed.

7. The Securities have been duly authorized by all requisite corporate action on the part of the Company under the DGCL and, when delivered to and paid for by the Underwriters in accordance with the terms of the Underwriting Agreement and registered in book-entry form, will be validly issued, fully paid and non-assessable, and free and clear of any preemptive rights or any similar rights arising under the DGCL, the Organizational Documents of the Company and the Company Scheduled Contract.

8. The statements in the Prospectus and the General Disclosure Package under the caption "Description of Securities," insofar as such statements purport to summarize certain provisions of the terms of the Common Stock and the DGCL, fairly summarize such provisions of the terms of such securities and the DGCL, respectively, in all material respects.

9. The statements in the Prospectus and the General Disclosure Package under the caption "Underwriting," insofar as such statements purport to summarize certain provisions of the Underwriting Agreement, fairly summarize such provisions in all material respects.

10. The Company is not and, solely after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Prospectus and the General Disclosure Package, will not be subject to registration and regulation as an "investment company" as such term is defined in the 1940 Act.

11. The Manager is not subject to registration and regulation as an "investment adviser" as such term is defined in the Advisers Act.

12. The Company has authority to issue 150,000,000 shares of Common Stock and 10,000,000 shares of preferred stock, par value \$0.01 per share, and such authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Prospectus and the General Disclosure Package.

The opinions stated herein are subject to the following qualifications, assumptions and limitations:

(a) except to the extent expressly stated in paragraphs 10 and 11 above, we do not express any opinion with respect to any securities, antifraud, derivatives or commodities laws, rules or regulations;

(b) we do not express any opinion with respect to the effect on the opinions stated herein of (i) except to the extent expressly stated in paragraph 3 above, the compliance or non-compliance of any party to the Underwriting Agreement with any laws, rules or regulations applicable to such party, or (ii) except to the extent expressly stated in paragraphs 1 and 2 above, the legal status or legal capacity of any such party to any of the Underwriting Agreement;

(c) we do not express any opinion with respect to whether the execution, delivery or performance by any Opinion Party of its obligations under the Underwriting Agreement will constitute a violation of, or a default under, any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of any Opinion Party or any of its subsidiaries;

(d) the opinion stated in paragraph 6 above is based solely on our discussions with the officers or other representatives of the Company responsible for the matters discussed therein, our review of documents furnished to us by the Company and our reliance on the representations and warranties of the Company contained in the Underwriting Agreement and the Officer's Certificate; we have not made any other inquiries or investigations or any search of the public docket records of any court, governmental agency or body or administrative agency; in addition, we call to your attention that we have not been engaged by, nor have we rendered any advice to, the Company in connection with any legal or governmental proceedings; accordingly, we do not have any special knowledge with respect to such matters;

(e) the opinion stated in paragraph 10 above is based solely on our discussions with the officers of the Company responsible for the matters discussed therein and our reliance on the representations and warranties of the Company contained in the Underwriting Agreement and the 1940 Act Certificate;

(f) the opinion stated in paragraph 11 above is based solely on our discussions with the officers of the Manager responsible for the matters discussed therein and our reliance on the representations and warranties of the Manager contained in the Underwriting Agreement and the Advisers Act Certificate; and

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.  
March [25], 2011  
Page 8

(g) we have assumed that the Manager Operating Agreement is the only agreement of the members of the Manager as to the affairs of the Manager and the conduct of its business, and we do not express any opinion with respect to the effect of any agreement of the members of the Manager other than the Manager Operating Agreement as to the affairs of the Manager and the conduct of its business.

This opinion is furnished only to you and is solely for your benefit in connection with the closing occurring today and the offering of the Securities pursuant to the Underwriting Agreement. Without our prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this opinion (other than any of your successors in interest by means of merger, consolidation, transfer of a business or other similar transaction).

Very truly yours,



Incorporated Documents

Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 25, 2011

The information specifically incorporated by reference into the Company's Annual Report on Form 10-K for the year ended December 31, 2009 from its Definitive Proxy Statement on Schedule 14A filed on April 2, 2010

Current Report on Form 8-K filed on January 20, 2011

The description of the Common Stock set forth in the registration statement on Form 8-A filed on May 9, 2008

Company Scheduled Orders

None

Manager Scheduled Orders

None

March [25], 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Re: American Capital Agency Corp. – Offering of Common Stock

Ladies and Gentlemen:

This letter is being furnished to you pursuant to Section 5(b) of the Underwriting Agreement, dated March [22], 2011 (the “Underwriting Agreement”), by and among you (the “Underwriters”), American Capital Agency Corp., a Delaware corporation (the “Company”), and American Capital Agency Management, LLC, a Delaware limited liability company (the “Manager”), relating to the sale by the Company to the Underwriters of [—] shares (the “Firm Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), and up to an additional [—] shares of Common Stock (the “Option Shares”) at the Underwriters’ option to cover over-allotments. The Firm Shares and the Option Shares are collectively referred to herein as the “Securities.”

In the above capacity, we have reviewed the registration statement on Form S-3 (File No. 333-170374) of the Company relating to the Securities and other securities of the Company filed on November 4, 2010 with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933 (the “Securities Act”) allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Securities Act (the “Rules and Regulations”), including the Incorporated Documents (as defined below) and 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") and (i) the prospectus, dated November 4, 2010 (the "Base Prospectus"), which forms a part of and is included in the Registration Statement, (ii) the preliminary prospectus supplement, dated March [21], 2011 (the "Preliminary Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, the "Preliminary 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, and (iii) the final prospectus supplement, dated March [22], 2011 (the "Prospectus Supplement" and, together with the Base Prospectus and the Incorporated Documents, the "Prospectus"), relating to the offering of the Securities in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations. We also have reviewed the documents identified on Schedule A hereto filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934 and incorporated by reference into the Preliminary Prospectus or the Prospectus, as the case may be, as of the date of the Preliminary Prospectus Supplement or Prospectus Supplement, respectively (collectively, the "Incorporated Documents") and such other documents as we deemed appropriate. We have been orally advised by the Commission that no stop order suspending the effectiveness of the Registration Statement has been issued, and, to our knowledge, no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

In addition, we have participated in conferences with officers and other representatives of the Company and the Manager, representatives of the independent registered public accountants of the Company and you and your counsel, at which the contents of the Registration Statement, the Prospectus, the General Disclosure Package (as defined below) and related matters were discussed. We did not participate in the preparation of the Incorporated Documents but have, however, reviewed such documents and discussed the business and affairs of the Company with officers and other representatives of the Company. We do not pass upon, or assume any responsibility for, the accuracy, completeness or fairness of the statements contained or incorporated by reference in the Registration Statement, the Prospectus or the General Disclosure Package and have made no independent check or verification thereof (except to the limited extent referred to in paragraphs 8 and 9 of our corporate opinion to you dated the date hereof and in paragraph 2 of our tax opinion to you dated the date hereof).

On the basis of the foregoing, (i) the Registration Statement, at the Effective Time (as defined below), and the Prospectus, as of the date of the Prospectus Supplement, appeared on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the Rules and Regulations (except that in each case we do not express any view as to the financial statements, schedules and other financial information included or

incorporated by reference therein or excluded therefrom) and (ii) no facts have come to our attention that have caused us to believe that the Registration Statement, at the Effective Time, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of the date of the Prospectus Supplement and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that in each case we do not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon or the statements contained in the exhibits to the Registration Statement). In addition, on the basis of the foregoing, no facts have come to our attention that have caused us to believe that the General Disclosure Package, as of the Applicable Time (as defined below), contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that we do not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon or the statements contained in the exhibits to the Registration Statement).

As used herein, (i) "Effective Time" means the time of effectiveness of the Registration Statement for purposes of Section 11 of the Securities Act, as such section applies to the Underwriters, (ii) "Applicable Time" means [—] New York City time on March [22], 2011, which you advised us is the time of the first contract of sale of the Securities, and (iii) "General Disclosure Package" means the Preliminary Prospectus, as amended and supplemented by the information set forth on Schedule II to the Underwriting Agreement.

In addition, based on the foregoing, we confirm to you that the Prospectus has been filed with the Commission within the time period required by Rule 424 of the Rules and Regulations.

This letter is furnished only to you and is solely for your benefit in connection with the closing occurring today and the offering of the Securities pursuant to the Underwriting Agreement. Without our prior written consent, this letter may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this letter (other than any of your successors in interest by means of merger, consolidation, transfer of a business or other similar transaction).

Very truly yours,

Incorporated Documents

Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 25, 2011

The information specifically incorporated by reference into the Company's Annual Report on Form 10-K for the year ended December 31, 2009 from its Definitive Proxy Statement on Schedule 14A filed on April 2, 2010

Current Report on Form 8-K filed on January 20, 2011

The description of the Common Stock set forth in the registration statement on Form 8-A filed on May 9, 2008

**[Subject to Opinion Committee Review]**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606-1720

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TEL: (312) 407-0700  
FAX: (312) 407-0411  
www.skadden.com

March [25], 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.

As Representatives of the several Underwriters  
named in Schedule I of the Underwriting Agreement

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Re: Certain United States Federal Income Tax Matters

Ladies and Gentlemen:

You have requested our opinion concerning certain United States Federal income tax considerations in connection with the sale (the "Sale") by American Capital Agency Corp., a Delaware corporation ("ACAC"), to the several Underwriters named in Schedule I (the "Underwriters") of the Underwriting Agreement among Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and Credit Suisse Securities (USA) LLC, as representatives of the several Underwriters, and ACAC and American Capital Agency Management, LLC, dated as of March [22], 2011 (the "Underwriting Agreement"), of [ ] shares of ACAC's common stock, par value \$0.01 per share, and an additional [ ] shares of ACAC's common stock at the Underwriters' option to cover over-allotments (collectively, the "Shares"), pursuant to a shelf registration statement on Form S-3 filed with the Securities and Exchange Commission (the "Commission"), including the base prospectus dated as of November 4, 2010, the preliminary prospectus supplement thereto dated



as of March [21], 2011, and the final prospectus supplement thereto dated as of March [22], 2011 (the "Offering Documents"). We have acted as tax counsel to ACAC in connection with, and have participated in the preparation of, the Offering Documents. This opinion is being furnished to you pursuant to Section 5(b) of the Underwriting Agreement. Capitalized terms used herein but not defined shall have the meanings set forth in the Underwriting Agreement.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the Offering Documents and such other documentation and information provided to us by ACAC as we have deemed necessary or appropriate as a basis for the opinion set forth herein. In addition, ACAC has provided us with, and we are relying upon, a certificate containing certain factual statements, factual representations and covenants of officers of ACAC (the "Officers' Certificate") relating to, among other things, the actual and proposed operations of ACAC and the entities in which it holds, or has held, a direct or indirect interest (collectively, the "Company"). For purposes of our opinion, we have not independently verified the facts, statements, representations and covenants set forth in the Officers' Certificate, the Offering Documents, or in any other document. In particular, we note that the Company may engage in transactions in connection with which we have not provided legal advice, and have not reviewed, and of which we may be unaware. Consequently, we have relied on ACAC's representation that the facts, statements, representations, and covenants presented in the Officers' Certificate, the Offering Documents, and other documents, or otherwise furnished to us, accurately and completely describe all material facts relevant to our opinion. We have assumed that all such facts, statements, representations and covenants are true without regard to any qualification as to knowledge, belief, intent, materiality, or otherwise. Our opinion is conditioned on the continuing accuracy and completeness of such facts, statements, representations and covenants. We are not aware of any facts inconsistent with the statements in the Officers' Certificate. Any material change or inaccuracy in the facts, statements, representations, and covenants referred to, set forth, or assumed herein or in the Officers' Certificate may affect our conclusions set forth herein.

In our review of certain documents in connection with our opinion as expressed below, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, photostatic, or electronic copies, and the authenticity of the originals of such copies. Where documents have been provided to us in draft form, we have assumed that the final executed versions of such documents will not differ materially from such drafts.

Our opinion is also based on the correctness of the following assumptions: (i) ACAC and each of the entities comprising the Company has been and will continue to be operated in accordance with the laws of the jurisdictions in which they were formed, and in the manner described in the relevant organizational documents, (ii) there will be no changes in the

applicable laws of the State of Delaware or of any other jurisdiction under the laws of which any of the entities comprising the Company have been formed, and (iii) each of the written agreements to which the Company is a party has been and will be implemented, construed and enforced in accordance with its terms.

In rendering our opinion, we have considered and relied upon the Internal Revenue Code of 1986, as amended (the "Code"), the regulations promulgated thereunder ("Regulations"), administrative rulings and other Treasury interpretations of the Code and the Regulations by the courts and the Internal Revenue Service ("IRS"), all as they exist at the date hereof. It should be noted that the Code, Regulations, judicial decisions, and administrative interpretations are subject to change at any time and, in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinion could affect our conclusions set forth herein. In this regard, an opinion of counsel with respect to an issue represents counsel's best judgment as to the outcome on the merits with respect to such issue, is not binding on the IRS or the courts, and is not a guarantee that the IRS will not assert a contrary position with respect to such issue or that a court will not sustain such a position if asserted by the IRS.

We express no opinion as to the laws of any jurisdiction other than the federal laws of the United States. We express no opinion on any issue relating to ACAC or any investment therein, other than as expressly stated herein.

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (A) ANY FEDERAL TAX ADVICE CONTAINED HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY PERSON, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE CODE; (B) THE ADVICE IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTION OR THE MATTERS ADDRESSED HEREIN BY THE COMPANY; AND (C) YOU SHOULD SEEK ADVICE BASED ON YOUR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

Based on and subject to the foregoing, we are of the opinion that:

1. Commencing with ACAC's initial taxable year that ended on December 31, 2008, ACAC has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Code, and its actual method of operation through the date of this opinion has enabled, and its proposed method of operation will continue to enable, it to meet the requirements for qualification and taxation as a REIT for its taxable year ending December 31, 2011 and subsequent years. As noted in the Offering Documents, ACAC's qualification and taxation as a REIT depend upon its ability to

meet, through actual operating results, certain requirements relating to the sources of its income, the nature of its assets, its distribution levels and the diversity of its stock ownership, and various other qualification tests imposed under the Code, the results of which are not reviewed by us. Accordingly, no assurance can be given that the actual results of ACAC's operations for any one taxable year will satisfy the requirements for taxation as a REIT under the Code.

2. Although the discussion set forth in the Offering Documents under the headings "Federal Income Tax Considerations" and "Supplement to Federal Income Tax Considerations" does not purport to discuss all possible United States Federal income tax consequences of the ownership and disposition of the Shares, such discussion, though general in nature, constitutes, in all material respects, a fair and accurate summary under current law of the material United States Federal income tax consequences of the ownership and disposition of the Shares of ACAC, subject to the qualifications set forth therein.

This opinion has been prepared for you in connection with the Sale and pursuant to Section 5(b) of the Underwriting Agreement. This opinion may not be relied upon by anyone else without our prior written consent. This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments or factual matters arising subsequent to the date hereof, or the impact of any information, document, certificate, record, statement, representation, covenant, or assumption relied upon herein that becomes incorrect or untrue.

Very truly yours,

FORM OF LOCK-UP AGREEMENT  
TO BE DELIVERED PURSUANT TO SECTION 5(j)

March 18, 2011

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
Deutsche Bank Securities Inc.

c/o Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

As Representatives of the several Underwriters

Re: Proposed Public Offering by American Capital Agency Corp.

Dear Sirs:

The undersigned, an officer and/or director or the manager of American Capital Agency Corp., a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC and Deutsche Bank Securities Inc. (in such capacity, the "Representatives") propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company and American Capital Agency Management, LLC, a Delaware limited liability company and the manager of the Company (the "Manager"), providing for the public offering of shares of the Company's common stock, \$0.01 par value per share ("Common Stock"). In recognition of the benefit that such an offering will confer upon the undersigned as an officer and/or director or the manager of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with the Representatives that, during a period of 30 days following the date of the Underwriting Agreement, the undersigned will not, without the prior written consent of the Representatives, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any of the shares of Common Stock or any securities convertible into or exchangeable or exercisable for shares of Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition, or file, or cause to be filed, any registration statement under the Securities Act of 1933, as amended, with

respect to any of the foregoing (collectively, the “Lock-Up Securities”) or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of shares of Common Stock or other securities, in cash or otherwise.

For the avoidance of doubt, nothing contained herein shall prevent the undersigned from, or restrict the ability of the undersigned to, (i) purchasing shares of Common Stock or other securities of the Company, (ii) exercising any options or other convertible securities granted under any benefit plan of the Company; provided, that any shares of Common Stock received upon exercise of such options or other convertible securities shall be subject to the foregoing restrictions, or (iii) causing to be filed one or more registration statements under the Securities Act, including amendments and supplements thereto, with respect to the Company’s Direct Stock Purchase Program and Dividend Reinvestment Program, and authorizing or effecting the sale by the Company of any shares of Common Stock registered pursuant thereto; *provided that* the undersigned shall not grant any purchase volume waivers under such plan during the period of 30 days from the date of the Underwriting Agreement.

Notwithstanding the foregoing, the undersigned may make gifts or transfers of Common Stock to, or for the benefit of, family members, charitable institutions, and trusts, limited partnerships or other entities created for estate planning purposes, the principal beneficiaries of which are family members or charitable institutions, subject to the condition that any such family member or charitable institution or other holder shall execute an agreement with the Representatives stating that such transferee is receiving and holding the shares of Common Stock subject to the provisions of this lock-up agreement. In addition, if the undersigned is a corporation, partnership, limited liability company or other entity, the undersigned may transfer shares of Common Stock to persons or other entities that own equity interests in the undersigned, subject to the condition that the recipient shall execute an agreement with the Representatives stating that such recipient is receiving and holding the shares of Common Stock subject to the provisions of this lock-up agreement.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the Lock-Up Securities, except in compliance with the foregoing instructions.

THIS LOCK-UP AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

*[Signature page follows.]*

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Very truly yours,

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**American Capital Agency Corp.**  
**Certification Pursuant to Section 302(a)**  
**of the Sarbanes-Oxley Act of 2002**

I, Malon Wilkus, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Capital Agency Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2011

By: /s/ MALON WILKUS

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Malon Wilkus  
Chairman of the Board  
and Chief Executive Officer

**American Capital Agency Corp.**  
**Certification Pursuant to Section 302(a)**  
**of the Sarbanes-Oxley Act Of 2002**

I, John R. Erickson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Capital Agency Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 6, 2011

By: /s/ JOHN R. ERICKSON

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John R. Erickson  
Chief Financial Officer and  
Executive Vice President



**American Capital Agency Corp.**  
**Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350,**  
**as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

We, Malon Wilkus, Chief Executive Officer and Chairman of the Board of Directors, and John R. Erickson, Executive Vice President and Chief Financial Officer of American Capital Agency Corp. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350 that:

1. The Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2010 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 6, 2011

By: /s/ MALON WILKUS

Malon Wilkus  
Chairman of the Board  
and Chief Executive Officer

Date: May 6, 2011

By: /s/ JOHN R. ERICKSON

John R. Erickson  
Chief Financial Officer and  
Executive Vice President

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.