

NEW YORK MORTGAGE TRUST INC

Form 424B5

April 01, 2014

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Filed Pursuant to Rule 424(b)(5)

Registration File No. 333-186017

**The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and they are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale thereof is not permitted.**

**Subject to Completion**

**Preliminary Prospectus Supplement, dated April 1, 2014**

**PROSPECTUS SUPPLEMENT**

**(To prospectus dated January 28, 2013)**

**13,000,000 Shares**

**Common Stock**

This is a public offering of common stock of New York Mortgage Trust, Inc. We are selling 13,000,000 shares of common stock. Our common stock is listed on The Nasdaq Global Select Market, or Nasdaq, under the symbol NYMT. On March 31, 2014, the last reported sale price of our common stock was \$7.78 per share.

To preserve our status as a real estate investment trust for federal income tax purposes, among other purposes, we impose restrictions on the ownership and transfer of our common stock. See **Description of Common Stock Restrictions on Ownership and Transfer** in the accompanying prospectus.

**Investing in our common stock involves a high degree of risk. You should carefully consider the risks described under Risk Factors beginning on page S-6 of this prospectus supplement and in our Annual Report on Form**

**10-K for the year ended December 31, 2013 before making an investment decision.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

	<b>Price to Public</b>	<b>Underwriting Discount and Commission</b>	<b>Proceeds to Us <sup>(1)</sup></b>
Per Share	\$	\$	\$
Total	\$	\$	\$

(1) Before deducting approximately \$150,000 in expenses payable by us.

We have granted the underwriters an option to purchase a maximum of 1,950,000 additional shares of common stock from us at the public offering price, less the underwriting discount, within 30 days after the date of this prospectus supplement.

The underwriters expect to deliver the shares of common stock to investors in this offering on or about April , 2013.

*Joint Bookrunners*

**UBS Investment Bank**

**Credit Suisse**

**Barclays**

**RBC Capital Markets**

**The date of this prospectus supplement is April , 2014.**

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**You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it.**

**We are not, and the underwriters are not, making an offer of the common stock covered by this prospectus supplement and the accompanying prospectus in any jurisdiction where the offer thereof is not permitted.**

**You should assume that the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus and in the documents incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document consists of two parts. The first part is the prospectus supplement, which describes the specific terms of the offering, and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The second part is the accompanying prospectus, which describes more general information, some of which may not apply to this offering. Before you buy any shares of our common stock, it is important for you to read and consider the information contained in this prospectus supplement and the accompanying prospectus together with additional information described under the headings "Incorporation by Reference of Information Filed with the SEC" and "Where You Can Find More Information."

If the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus, you should rely on the information set forth in this prospectus supplement.

In this prospectus supplement, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as we, us, the Company, or our, unless we specifically state otherwise or the context indicates otherwise. In addition, the following defines certain of the commonly used terms in this prospectus supplement.

Agency ARMs refers to Agency RMBS comprised of adjustable-rate and hybrid adjustable-rate RMBS;

Agency IOs refers to IOs that represent the right to the interest components of the cash flow from a pool of residential mortgage loans issued or guaranteed by a GSE or an agency of the U.S. government;

Agency RMBS refers to RMBS representing interests in or obligations backed by pools of residential mortgage loans issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association ( Fannie Mae ) or the Federal Home Loan Mortgage Corporation ( Freddie Mac and together with Fannie Mae, the GSEs ), or an agency of the U.S. government, such as the Government National Mortgage Association ( Ginnie Mae );

ARMs refers to adjustable-rate residential mortgage loans;

CMBS refers to commercial mortgage-backed securities comprised of commercial mortgage pass-through securities, as well as IO or PO securities that represent the right to a specific component of the cash flow from a pool of commercial mortgage loans;

CLO refers to collateralized loan obligations;

Consolidated K-Series refers to six separate Freddie-Mac sponsored multi-family loan K-Series securitizations, of which we, or one of our special purpose entities, own the first loss principal only securities and certain IOs issued by the securitizations;

distressed residential loans refers to pools of performing, re-performing and to a lesser extent non-performing, fixed-rate and adjustable-rate, fully amortizing, interest-only and balloon, seasoned mortgage loans secured by first liens on one- to four-family properties;

IOs refers collectively to interest only and inverse interest only mortgage-backed securities that represent the right to the interest component of the cash flow from a pool of mortgage loans;

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multi-family CMBS refers to CMBS backed by commercial mortgage loans on multi-family properties;

POs refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans;

prime ARM loans refers to prime credit quality residential ARM loans held in securitization trusts; and

RMBS refers to residential mortgage-backed securities that are adjustable-rate, hybrid adjustable-rate, fixed-rate, interest only and inverse interest only or principal only securities.

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**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

When used in this prospectus supplement and in the accompanying prospectus, in future filings with the Securities and Exchange Commission, or SEC, or in press releases or other written or oral communications, statements which are not historical in nature, including those containing words such as believe, expect, anticipate, estimate, plan, continue, intend, should, would, could, goal, objective, will, are intended to identify forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. The following factors are examples of those factors that could cause actual results to vary from our forward-looking statements: changes in interest rates and the market value of our securities; the impact of the downgrade of the long-term credit ratings of the United States, Fannie Mae, Freddie Mac and Ginnie Mae; market volatility; changes in the prepayment rates on the mortgage loans underlying our investment securities; increased rates of default and/or decreased recovery rates on our assets; our ability to borrow to finance our assets; changes in government laws, regulations or policies affecting our business; our ability to maintain our qualification as a real estate investment trust for federal tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended; and risks associated with investing in real estate assets, including changes in business conditions and the general economy. These and other risks, uncertainties and factors, including the risk factors described below and in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2013, as updated by those risk factors included in our subsequent filings under the Exchange Act, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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**SUMMARY**

*The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled "Risk Factors" and the documents incorporated by reference herein, before making an investment decision.*

We are a real estate investment trust ( REIT ) in the business of acquiring, investing in, financing and managing primarily mortgage-related assets and financial assets. Our objective is to manage a portfolio of investments that will deliver stable distributions to our stockholders over diverse economic conditions. We intend to achieve this objective through a combination of net interest margin and net realized capital gains from our investment portfolio. Our portfolio includes certain credit sensitive assets and investments sourced from distressed markets in recent years that create the potential for capital gains, as well as more traditional types of mortgage-related investments that generate interest income.

Under our investment strategy, our targeted assets currently include multi-family CMBS, mezzanine loans to and preferred equity investments in owners of multi-family properties, residential mortgage loans, including loans sourced from distressed markets, and Agency RMBS. Subject to maintaining our qualification as a REIT, we also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, non-Agency RMBS (which may include IOs and POs), collateralized mortgage obligations and securities issued by newly originated residential securitizations, including credit sensitive securities from these securitizations.

We strive to maintain and achieve a balanced and diverse funding mix to finance our assets and operations. To this end, we rely primarily on a combination of short-term borrowings, such as repurchase agreements with terms typically of 30 days, and longer term structured financings, such as securitization and resecuritization transactions, with terms longer than one year.

We internally manage a certain portion of our portfolio, including Agency ARMs, Agency fixed-rate RMBS, non-Agency RMBS, CLOs and certain residential securitized loans. In addition, as part of our investment strategy, we also contract with certain external investment managers to manage specific asset types targeted by us. We are a party to separate investment management agreements with Headlands Asset Management, LLC ( Headlands ), RiverBanc, LLC ( RiverBanc ), and The Midway Group, L.P. ( Midway ), with Headlands providing investment management services with respect to our investments in certain distressed residential loans, RiverBanc providing investment management services with respect to our investments in multi-family CMBS and certain commercial real estate-related debt investments, and Midway providing investment management services with respect to our investments in Agency IOs.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended (the Code ), with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. Even if we maintain our qualification as a REIT, we expect to be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiaries.

Our principal executive offices are located at 275 Madison Avenue, Suite 3200, New York, New York 10016, and our telephone number is (212) 792-0107. Our website address is [www.nymtrust.com](http://www.nymtrust.com). Our website and the information contained at or connected to our website do not constitute a part of this prospectus supplement or the accompanying prospectus.



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**Recent Developments**

*First Quarter 2014 Dividends*

On March 13, 2014, our Board of Directors declared a regular quarterly cash dividend of \$0.27 per share on shares of our common stock for the quarter ended March 31, 2014. The dividend is payable on April 25, 2014 to our common stockholders of record as of March 24, 2014. Shares of common stock purchased in this offering will not receive this dividend.

Also on March 13, 2014, in accordance with the terms of our 7.75% Series B Cumulative Redeemable Preferred Stock (our Series B Preferred Stock), our Board of Directors declared a Series B Preferred Stock cash dividend of \$0.484375 per share of Series B Preferred Stock for the quarterly period beginning January 15, 2014 and ending on April 14, 2014. This dividend is payable on April 15, 2014 to holders of record of our Series B Preferred Stock as of April 1, 2014.

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**THE OFFERING**

Common Stock Offered	13,000,000 shares
Shares Outstanding After the Offering <sup>(1)</sup>	88,706,546 shares
Use of Proceeds	We intend to use a majority of the net proceeds of this offering to acquire distressed residential loans and the remainder of the net proceeds to invest in mezzanine loans to and preferred equity investments in owners of multi-family properties and certain of our other targeted assets. We may also use a portion of the net proceeds for general working capital purposes, including the repayment of indebtedness. See Use of Proceeds.
Listing	Our common stock is listed on Nasdaq under the symbol NYMT.
Ownership Restrictions	Our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Code, either (i) more than 9.9% in value of the aggregate of our outstanding shares of capital stock or (ii) more than 9.9% in value or in number of shares, whichever is more restrictive, of the aggregate of our outstanding shares of common stock. Our Board of Directors has discretion to grant exemptions from the 9.9% ownership limitations, subject to such terms and conditions as it deems appropriate. These restrictions on ownership of our common stock and capital stock are intended to, among other purposes, preserve our qualification as a REIT for federal income tax purposes. See Description of Common Stock Restrictions on Ownership and Transfer and Material Federal Income Tax Considerations in the accompanying prospectus.
Risk Factors	An investment in our common stock is subject to a high degree of risk. Please refer to Risk Factors and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before investing in shares of our common stock.

(1) Assumes no exercise of the underwriters option to purchase additional shares of common stock. Based on 75,706,546 shares of common stock outstanding as of March 31, 2014.

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**RISK FACTORS**

Investing in our shares of common stock involves a high degree of risk. Please see the risks described under the caption "Risk Factors" beginning on page 16 of our Annual Report on Form 10-K for the year ended December 31, 2013. Such risks are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect us and the market value of our common stock. The risks described could affect our business, financial condition, liquidity, results of operations and the market value of our common stock. In such a case, you may lose all or part of your original investment. You should carefully consider the risks described in these reports, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the shares of our common stock.

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**USE OF PROCEEDS**

We estimate that the net proceeds of this offering will be approximately \$            million (or approximately \$    million if the underwriters exercise their option to purchase additional shares in full), in each case, after deducting the underwriting discount and commission, as well as estimated offering expenses of approximately \$150,000 payable by us.

We intend to use a majority of the net proceeds of this offering to acquire distressed residential loans and the remainder of the net proceeds to invest in mezzanine loans to and preferred equity investments in owners of multi-family properties and certain of our other targeted assets. We may also use a portion of the net proceeds for general working capital purposes, including the repayment of indebtedness.

Pending these uses, we intend to maintain the net offering proceeds in interest-bearing, short-term, marketable investment grade securities or money market accounts or (interest or non-interest bearing) checking (or escrow) accounts that are consistent with our intention to maintain our qualification as a REIT. These investments may include, for example, government securities other than agency securities, certificates of deposit and interest-bearing bank deposits. These investments are expected to provide a lower net return than we will seek to achieve from our targeted assets.

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**ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of additional federal tax considerations with respect to the ownership of our stock. This summary supplements and, where applicable, supersedes the discussion under **Material Federal Income Tax Considerations** in the accompanying prospectus, and should be read together with such discussion.

**Recent Legislation**

The highest marginal individual income tax rate on ordinary income is 39.6%.

**Withholding**

As referenced in the accompanying prospectus under the captions **Material Federal Income Tax Considerations** **Taxation of Non-U.S. Stockholders Distributions** and **Information Reporting Requirements and Withholding**, U.S. withholding tax at a rate of 30% will be imposed on dividends paid on our stock after December 31, 2013 to U.S. stockholders that hold our stock through foreign accounts or intermediaries if certain disclosure requirements related to U.S. accounts are not satisfied and certain non-U.S. stockholders if certain disclosure requirements related to U.S. ownership are not satisfied. The effective date of the imposition of this U.S. withholding tax has been extended to payments after June 30, 2014.

**Table of Contents****DIVIDEND POLICY**

We intend to pay quarterly dividends and to make distributions to our common stockholders in amounts such that all or substantially all of our REIT taxable income in each year, subject to certain adjustments, is distributed. We have not, however, established a minimum dividend payment level for shares of our common stock. All distributions to holders of our common stock will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT qualification and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future at the current rate or at all. See Risk Factors.

The following table sets forth the cash dividends declared per share of common stock during each fiscal quarter since January 1, 2011.

	<b>Cash Dividends Declared Per Share of Common Stock</b>	
<b>2014</b>		
First Quarter	\$	0.27
<b>2013</b>		
Fourth Quarter	\$	0.27
Third Quarter	\$	0.27
Second Quarter	\$	0.27
First Quarter	\$	0.27
<b>2012</b>		
Fourth Quarter	\$	0.27
Third Quarter	\$	0.27
Second Quarter	\$	0.27
First Quarter	\$	0.25
<b>2011</b>		
Fourth Quarter	\$	0.35
Third Quarter	\$	0.25
Second Quarter	\$	0.22
First Quarter	\$	0.18

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The following table sets forth our cash and cash equivalents and total capitalization as of December 31, 2013 (1) on an actual basis (2) on an adjusted basis to give effect to the consummation of our public offering of common stock in January 2014 and (3) on a pro forma as adjusted basis to give effect to the consummation of this offering. This table should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our condensed consolidated financial statements and the notes thereto incorporated by reference in this prospectus supplement.

	As of December 31, 2013		
	Actual	As Adjusted <sup>(1)</sup>	Pro forma As Adjusted <sup>(1)(2)</sup>
(Dollars in thousands) unaudited			
<b>Cash and cash equivalents</b>	\$ 31,798	\$ 107,643	\$
<b>Debt:</b>			
Financing arrangements, portfolio investments	\$ 791,125	\$ 791,125	\$ 791,125
Residential collateralized debt obligations <sup>(3)</sup>	158,410	158,410	158,410
Multi-family collateralized debt obligations, at fair value <sup>(4)</sup>	7,871,020	7,871,020	7,871,020
Securitized debt	304,964	304,964	304,964
Subordinated debentures	45,000	45,000	45,000
<b>Total debt</b>	9,170,519	9,170,519	9,170,519
<b>Stockholders' equity</b>			
Preferred stock, \$0.01 par value, 7.75% Series B cumulative redeemable, \$25 liquidation preference per share, 3,450,000 shares authorized, 3,000,000 shares issued and outstanding actual, 3,000,000 issued and outstanding as adjusted, and 3,000,000 issued and outstanding pro forma as adjusted	72,397	72,397	72,397
Common stock, \$0.01 par value, 400,000,000 shares authorized, 64,102,029 shares issued and outstanding actual, 75,602,029 shares issued and outstanding as adjusted and 88,602,029 shares issued and outstanding pro forma as adjusted	641	756	886
Additional paid-in capital	404,555	480,285	
Accumulated other comprehensive income	3,073	3,073	3,073
<b>Total stockholders' equity</b>	480,666	556,511	
<b>Total capitalization</b>	\$ 9,651,185	\$ 9,727,030	\$

- (1) The as-adjusted and pro forma as adjusted amounts reflect the net proceeds to us from the sale of 11,500,000 shares of our common stock in a public offering in January 2014 at a net public offering price of \$6.61 per share, and the receipt of the total estimated net proceeds of approximately \$75.8 million, after deducting underwriting discounts and commissions as well as offering expenses payable by us. Excludes 104,517 shares issued to employees during the quarter ended March 31, 2014 under our 2010 Stock Incentive Plan.
- (2) The pro forma as adjusted amount reflects the net proceeds to us from the sale of 13,000,000 shares of our common stock in this offering at a net price of \$ per share, and the receipt of the total estimated net proceeds of approximately \$ million, after deducting the underwriting discount and commission and estimated offering expenses payable by us (assuming no exercise of the underwriters' option to purchase additional shares).

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- (3) The residential collateralized debt obligations ( Residential CDOs ) permanently finance our residential mortgage loans held in securitization trusts. For financial reporting purposes, the ARM loans held as collateral in the securitization trusts are recorded as our assets and the Residential CDOs are recorded as our debt. We completed four securitizations collectively in 2005 and 2006, the first three of which were accounted for as a permanent financing and the fourth of which was accounted for as a sale and, accordingly, not included in our financial statements. We had a net equity investment of approximately \$6.6 million in these residential securitization trusts as of December 31, 2013.
- (4) Multi-family collateralized debt obligations, at fair value, or Multi-Family CDOs, are comprised of Multi-Family CDOs that permanently finance the multi-family mortgage loans held in the Consolidated K-Series. The Consolidated K-Series collectively represents six separate Freddie-Mac sponsored multi-family loan K-Series securitizations, of which we, or one of our special purpose entities, or SPEs, own the first loss PO securities and certain IO securities. As of December 31, 2013, we owned 100% of the first loss securities and certain IO securities of the Consolidated K-Series. We determined that the Consolidated K-Series were VIEs and that we are the primary beneficiary of the Consolidated K-Series. As a result, we are required to consolidate the Consolidated K-Series underlying multi-family loans including their liabilities, interest income and expense in our consolidated financial statements. As of December 31, 2013, we had a net investment in the Consolidated K-Series of approximately \$240.0 million.



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In accordance with the terms and conditions contained in the underwriting agreement, we have agreed to sell to each of the underwriters named below, and each of the underwriters, for which UBS Securities LLC, Credit Suisse Securities (USA) LLC, Barclays Capital Inc. and RBC Capital Markets, LLC are acting as the representatives, has, severally, and not jointly, agreed to purchase from us on a firm commitment basis the shares offered in this offering set forth opposite such underwriter's name below:

Underwriters	Number of Shares
UBS Securities LLC	
Credit Suisse Securities (USA) LLC	
Barclays Capital Inc.	
RBC Capital Markets, LLC	
<b>Total</b>	<b>13,000,000</b>

We have been advised by the representatives of the underwriters that the underwriters propose to offer the shares directly to the public at the public offering price set forth on the cover page of this prospectus supplement. Any shares sold by the underwriters to securities dealers will be sold at the public offering price less a selling concession not in excess of \$ per share.

The underwriting agreement provides that the underwriters' obligations to purchase the shares are subject to conditions contained in the underwriting agreement. The underwriters are obligated to purchase and pay for all of the shares offered by this prospectus supplement other than those covered by the option to purchase additional shares, if any of these securities are purchased.

**Underwriting Discount**

The following table summarizes the underwriting discount to be paid to the underwriters by us.

	Total, Without Option Exercise	Total, With Full Option Exercise
Underwriting discount to be paid to the underwriters by us for the shares	\$	\$

We have agreed to reimburse the underwriters for their expenses in an amount of up to \$10,000, which may be incurred in connection with the review by Financial Industry Regulatory Authority, Inc. of the terms of the shares offered hereby. We estimate that our portion of the total expenses of this offering, exclusive of the underwriting discount, will be approximately \$150,000.

**Option to Purchase Additional Shares**

We have granted to the underwriters an option, exercisable not later than 30 days after the date of this prospectus supplement, to purchase up to 1,950,000 shares at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus supplement. If any additional shares are purchased pursuant to this option, the underwriters will offer these additional shares on the same terms as those on which the other shares are being offered hereby.

**Lock-Ups**

We have agreed that we will not directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain

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any short position with respect to, transfer, establish or maintain an open put equivalent position within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of our common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of our common stock, options or warrants to acquire shares of our common stock, or securities exchangeable or exercisable for or convertible into shares of our common stock, or publicly disclose the intention to take any such action, without, in each case, the prior written consent of UBS Securities LLC for a period of 30 days after the date of this prospectus supplement. However, we may, during this 30-day lock-up period, grant shares of common stock or options to purchase shares of our common stock to our directors, officers, employees and consultants in the ordinary course under our existing 2010 Stock Incentive Plan.

Each of our directors and executive officers has agreed that they will not sell or offer or contract to sell or offer, grant any option or warrant for the sale of, assign, transfer, pledge, hypothecate, or otherwise encumber or dispose of any legal or beneficial interest in any shares of our common stock, 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 our common stock or other securities, in cash or otherwise, or publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of UBS Securities LLC for a period of 30 days after the date of this prospectus supplement. However, each of our directors and executive officers may transfer or dispose of our shares during this 30-day lock-up period, provided, that (i) such transfer shall not involve a disposition for value, (ii) the transferee agrees to be bound in writing by the restrictions set forth in this paragraph for the remainder of the 30-day lock-up period prior to such transfer, and (iii) no filing by the transferor or transferee under the Exchange Act is required or voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 30-day lock-up period).

## **Stabilization, Short Positions and Penalty Bids**

The underwriters may engage in over-allotment, syndicate covering transactions, stabilizing transactions and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of our common stock:

Over-allotment involves sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in the option granted to the underwriters to purchase additional shares. In a naked short position, the number of shares involved is greater than the number of shares in the option granted to the underwriters to purchase additional shares. An underwriter may close out any short position by exercising its option, in whole or in part, or by purchasing shares in the open market.

Syndicate covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of securities needed to close out the short position, the representatives will consider, among other things, the price of the securities available for purchase in the open market as compared to the price at which it may purchase the securities through the option granted to the underwriters to purchase additional shares. If the underwriters sell more securities than could be covered by the option granted to the underwriters to purchase additional shares, which would constitute a naked short position, the position can only be closed out by buying securities in the open market. A naked short position is more likely to be created if the representative is concerned that there could be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in the offering.

Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specific maximum.

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Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions. These syndicate covering transactions, stabilizing transactions and penalty bids may have the effect of raising or maintaining the market prices of our securities or preventing or retarding a decline in the market prices of our securities. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on Nasdaq, in the over-the-counter market or on any trading market and, if commenced, may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the prices of our securities. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these stabilizing transactions or that any transactions, once commenced, will not be discontinued without notice.

Affiliates of certain of the underwriters have been, may be, or are counterparties under one or more of our repurchase agreements, and we have entered into interest rate swaps with affiliates of certain of the underwriters. In addition, the underwriters and their affiliates have been, may be, or are lenders to, and counterparties in securities, derivatives and other trading activities with, certain of our affiliates and us and in the ordinary course of their business activities, the underwriters and their affiliates may hold or trade securities of ours or our affiliates. In conjunction with services that affiliates of the underwriters have provided, may provide or are providing to us and our affiliates, commercial disputes may arise. Some of the underwriters and their affiliates have engaged in, and may in the future engage in, commercial banking, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates for which they have received, or may in the future receive, customary fees and commissions. We are a party to master repurchase agreements with each of Credit Suisse Securities (USA) LLC, Barclays Capital Inc. and RBC Capital Markets, LLC or their affiliates and an international swaps and derivatives contract with Credit Suisse Securities (USA) LLC or its affiliates pursuant to which each of Credit Suisse Securities (USA) LLC, Barclays Capital Inc. and RBC Capital Markets, LLC or their affiliates may receive customary fees and expenses. As of December 31, 2013, we had approximately \$80.2 million, \$42.1 million and \$70.1 million of borrowings outstanding under master repurchase agreements with Credit Suisse Securities (USA) LLC, Barclays Capital Inc. and RBC Capital Markets, LLC or their respective affiliates, respectively, and approximately \$345.0 million of notional amounts outstanding under an international swaps and derivatives contract with Credit Suisse Securities (USA) LLC or its affiliates.

## **Indemnification**

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make with respect to any of these liabilities.

This prospectus supplement and the accompanying prospectus in electronic format may be made available on websites maintained by the underwriters or selling group members, and the underwriters or selling group members may distribute the prospectus supplement and accompanying prospectus electronically.

## **Nasdaq Listing**

The shares are listed on Nasdaq under the symbol NYMT.

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**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Exchange Act, and, in accordance with those requirements, file reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information, as well as the registration statement and the exhibits and schedules thereto, can be inspected at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. Copies of such materials may be obtained at prescribed rates. Information about the operation of the public reference facilities may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy statements and other information regarding registrants, including us, that file such information electronically with the SEC. The address of the SEC's website address is [www.sec.gov](http://www.sec.gov). Our common stock is listed on Nasdaq and our corporate website address is [www.nymtrust.com](http://www.nymtrust.com). Our internet website and the information contained therein or connected thereto do not constitute a part of this prospectus supplement, the accompanying prospectus or any amendment or supplement thereto.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered by this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus, which form a part of the registration statement, do not contain all of the information set forth in the registration statement and its exhibits and schedules, certain parts of which are omitted in accordance with the SEC's rules and regulations. For further information about us and our common stock, we refer you to the registration statement and to such exhibits and schedules. Statements contained in this prospectus supplement and the accompanying prospectus concerning the provisions of any document filed as an exhibit to the registration statement or otherwise filed with the SEC are not necessarily complete, and in each instance reference is made to the copy of such document so filed. Each such statement is qualified in its entirety by such reference.

**INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC**

The SEC allows us to incorporate by reference into this prospectus supplement and the accompanying prospectus the information we file with the SEC, which means that we can disclose important business, financial and other information to you by referring you to other documents separately filed with the SEC. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement and the accompanying prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in this prospectus supplement and the accompanying prospectus.

We incorporate by reference the following documents or information filed with the SEC and any subsequent filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of the initial registration statement and prior to completion of the offering of the common stock described in this prospectus supplement and the accompanying prospectus (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed on March 10, 2014;

our Current Reports on Form 8-K filed on January 10, 2014 and March 13, 2014;

the information specifically incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended December 31, 2013 from our Definitive Proxy Statement on Schedule 14A filed on April 1, 2014; and

the descriptions of our capital stock in our Registration Statements on Form 8-A filed on June 3, 2008 and May 31, 2013.

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We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying prospectus are delivered, upon his or her written or oral request, a copy of any or all documents referred to above that have been or may be incorporated by reference into this prospectus supplement and the accompanying prospectus, excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request those documents from us by writing to New York Mortgage Trust, Inc., c/o Investor Relations, 275 Madison Avenue, New York, New York 10016 or by calling Investor Relations at (646) 216-2363.

**EXPERTS**

The consolidated financial statements of New York Mortgage Trust, Inc. as of December 31, 2013 and December 31, 2012 and for each of the three years in the period ended December 31, 2013, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2013, incorporated by reference in this prospectus supplement, the accompanying prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

**LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Hunton & Williams LLP and, with respect to certain matters of Maryland law, Venable LLP. Certain legal matters will be passed upon for the underwriters by Skadden, Arps, Slate, Meagher & Flom LLP.

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**PROSPECTUS**

**\$500,000,000**

**Common Stock**

**Preferred Stock**

**Debt Securities**

We may offer and sell, from time to time, in one or more offerings, up to an aggregate of \$500,000,000 of the common stock, preferred stock and debt securities described in this prospectus. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to consummate sales of any of these securities unless it is accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our shares of common stock are listed on the Nasdaq Capital Market under the symbol NYMT. The last reported sale price of our common stock on the Nasdaq Capital Market on January 18, 2013, was \$6.73 per share.

To preserve our qualification as a real estate investment trust for federal income tax purposes, among other purposes, we impose certain restrictions on the ownership and transfer of our capital stock. See Description of Common Stock Restrictions on Ownership and Transfer and Description of Preferred Stock Restrictions on Ownership and Transfer; Change of Control Provisions.

**Investing in our securities involves substantial risks. You should carefully read and consider the information under Risk Factors on page 3 of this prospectus and any prospectus supplement before making a decision to purchase these securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is January 28, 2013.**

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**You should rely only on the information contained in this prospectus and the accompanying prospectus supplement or incorporated by reference in these documents. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus or the accompanying prospectus supplement. If anyone provides you with different, inconsistent or unauthorized information or representations, you must not rely on them. This prospectus and the accompanying prospectus supplement are an offer to sell only the securities offered by these documents, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or any prospectus supplement is current only as of the date on the front of those documents.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a shelf registration statement that we have filed with the Securities and Exchange Commission, or the SEC. Under this shelf registration statement, we may offer and sell any combination of our common stock, preferred stock and debt securities in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer to sell securities under this shelf registration statement, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information contained in this prospectus. Before you buy any of our securities, it is important for you to consider the information contained or incorporated by reference in this prospectus and any prospectus supplement together with additional information described under the headings **Incorporation By Reference Of Information Filed With The SEC** and **Where You Can Find More Information**.

The SEC allows us to incorporate by reference information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. You should rely only on the information incorporated by reference or set forth in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus or any prospectus supplement is accurate only as of the date of the document incorporated by reference. Our business, financial condition, results of operations and prospects may have changed since that date.

In this prospectus, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as **we**, **us**, **Company**, or **our**, unless we specifically state otherwise or the context indicates otherwise. In addition, the following defines certain of the commonly used terms in this prospectus: **RMBS** refers to residential adjustable-rate, hybrid adjustable-rate, fixed-rate, interest only and inverse interest only, and principal only mortgage-backed securities; **Agency RMBS** refers to RMBS representing interests in or obligations backed by pools of residential mortgage loans issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association ( **Fannie Mae** ) or the Federal Home Loan Mortgage Corporation ( **Freddie Mac** ), or an agency of the U.S. government, such as the Government National Mortgage Association ( **Ginnie Mae** ); **IOs** refers collectively to interest only and inverse interest only mortgage-backed securities that represent the right to the interest component of the cash flow from a pool of mortgage loans; **POs** refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans; **ARMs** refers to adjustable-rate residential mortgage loans; **prime ARM loans** refers to prime credit quality residential ARM loans ( **prime ARM loans** ) held in securitization trusts; and **CMBS** refers to commercial mortgage-backed securities comprised of commercial mortgage pass-through securities, as well as IO or PO securities that represent the right to a specific component of the cash flow from a pool of commercial mortgage loans.



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**CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION**

When used in this prospectus and in any accompanying prospectus supplement, in filings with the SEC or in press releases or other written or oral communications, statements that are not historical in nature, including those containing words such as believe, expect, anticipate, estimate, project, plan, continue, intend, should, would, could, goal, objective, will, may or similar expressions, are intended to identify statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. The following factors are examples of those that could cause actual results to vary from our forward-looking statements: changes in interest rates and the market value of our securities; changes in credit spreads; the impact of the downgrade of the long-term credit ratings of the United States, Fannie Mae, Freddie Mac, and Ginnie Mae; changes to the infrastructure of Fannie Mae, Freddie Mac or Ginnie Mae; market volatility; changes in the prepayment rates on the mortgage loans underlying our investment securities; increased rates of default and/or decreased recovery rates on our assets; our ability to borrow to finance our assets; changes in government regulations affecting our business; our ability to maintain our qualification as a real estate investment trust for federal income tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended; and risks associated with investing in real estate assets, including changes in business conditions and the general economy. These and other risks, uncertainties and factors, including the risk factors described in Item 1A of our most recent Annual Report on Form 10-K, as amended and supplemented from time to time, as updated by those risk factors included in our subsequent Quarterly Reports on Form 10-Q and our other filings under the Exchange Act, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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### **OUR COMPANY**

#### **General**

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets and, to a lesser extent, financial assets. Our objective is to manage a portfolio of investments that will deliver stable distributions to our stockholders over diverse economic conditions. We intend to achieve this objective through a combination of net interest margin and net realized capital gains from our investment portfolio. Our investment portfolio includes investments sourced from distressed markets over recent years that create the potential for capital appreciation, as well as more traditional types of mortgage-related investments that generate interest income, such as Agency RMBS consisting of fixed-rate RMBS, which we sometimes refer to as Agency fixed-rate RMBS, Agency RMBS consisting of adjustable-rate and hybrid adjustable-rate RMBS, which we sometimes refer to as Agency ARMs, and Agency RMBS comprised of IOs, which we sometimes refer to as Agency IOs.

Under our investment strategy, our targeted assets currently include Agency ARMs, Agency fixed-rate RMBS, Agency IOs, CMBS backed by commercial mortgage loans on multi-family properties, which we sometimes refer to as multi-family CMBS, and residential mortgage loans, including loans sourced from distressed markets. Subject to maintaining our qualification as a REIT, we also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, non-Agency RMBS (which may include IOs and POs), collateralized mortgage obligations and certain commercial real estate-related debt investments.

As part of our investment strategy, we are a party to separate investment management agreements with The Midway Group, L.P., or Midway, RiverBanc, LLC, or RiverBanc, and Headlands Asset Management LLC, or Headlands, pursuant to which Midway, RiverBanc and Headlands provide investment management services with respect to our investments in Agency IOs, multi-family CMBS, and certain residential mortgage loans, respectively.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. Even if we maintain our qualification as a REIT, we expect to be subject to federal, state and local taxes on our income generated in our taxable REIT subsidiaries, or TRSs.

#### **Corporate Offices**

We are a Maryland corporation that was formed in 2003. Our principal executive offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, and our telephone number is (212) 792-0107. Our website is [www.nymtrust.com](http://www.nymtrust.com). Our website and the information contained at or connected to our website do not constitute a part of this prospectus or any accompanying prospectus supplement.

**Table of Contents****RISK FACTORS**

Investing in our securities involves substantial risks, including the risk that you might lose your entire investment. Before making an investment decision, you should carefully read and consider all of the information contained or incorporated by reference into this prospectus, including the risk factors and other information set forth under the heading **Risk Factors** in our most recent Annual Report on Form 10-K, as amended and supplemented from time to time, as updated by those risk factors included in our subsequent Quarterly Reports on Form 10-Q and our other filings with the SEC under the Exchange Act (which information is incorporated by reference in this prospectus). For a description of the reports and documents incorporated by reference into this prospectus, and information about where you can find them, see **Where You Can Find More Information** and **Incorporation by Reference of Information Filed with the SEC** below. Any one of the risks discussed could cause actual results to differ materially from expectations and could adversely affect our business, financial condition and results of operations. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition and results of operations.

**RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED****FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our consolidated ratios of earnings to fixed charges and of earnings to combined fixed charges and preferred stock dividends for the nine months ended September 30, 2012, and for each of the last five fiscal years.

	<b>Nine Months</b>					
	<b>Ended</b>		<b>Year Ended December 31,</b>			
	<b>September 30,</b>		<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>2012</b>	<b>2011</b>				
Ratio of earnings to fixed charges	1.49	3.74	2.43	2.26	0.40	0.62
Ratio of earnings to combined fixed charges and preferred stock dividends	1.49	3.74	2.43	2.26	0.40	0.62

We computed the ratio of earnings to fixed charges by dividing earnings by fixed charges. We computed the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by the sum of fixed charges and dividends on outstanding shares of preferred stock (excluding dividends paid on our Series A Cumulative Redeemable Convertible Preferred Stock, or our Series A Preferred Stock). Fixed charges consist of interest costs, whether expensed or capitalized, and amortization of financing costs, and includes the payment of dividends on our Series A Preferred Stock, which was accounted for as a convertible preferred debenture pursuant to ASC 480, *Distinguishing Liabilities from Equity*. For the period January 18, 2008 to December 31, 2010, we had 1,000,000 shares of our Series A Preferred Stock issued and outstanding. For all other periods presented in the table above, no shares of preferred stock were outstanding. For the years ended December 31, 2008 and 2007, earnings were insufficient to cover fixed charges and combined fixed charges and preferred share dividends by approximately \$21,664,000 and \$18,964,000, respectfully.

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**USE OF PROCEEDS**

Except as may be set forth in a particular prospectus supplement, we will add the net proceeds from sales of securities to our general corporate funds, which we may use for new investments in accordance with our investment strategy in place at such time, to repay indebtedness or for other general corporate purposes. Any specific allocation of the net proceeds of an offering of securities to a specific purpose will be determined at the time of such offering and will be described in the related prospectus supplement.

**DESCRIPTION OF THE SECURITIES WE MAY OFFER**

This prospectus contains a summary description of the common stock, preferred stock and debt securities that we may offer from time to time. As further described in this prospectus, these summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in the accompanying prospectus supplement and other offering material. The accompanying prospectus supplement may update, change or add to the terms and conditions of the securities as described in this prospectus.

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### **DESCRIPTION OF COMMON STOCK**

*The following summary description of our common stock does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our charter and our bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See Where You Can Find More Information.*

#### **General**

Our charter provides that we may issue up to 400,000,000 shares of common stock, par value \$0.01 per share. As of December 31, 2012, 49,575,331 shares of common stock were issued and outstanding. Under Maryland law, our stockholders are not generally liable for our debts or obligations. Our charter authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, without stockholder approval.

#### **Voting Rights of Common Stock**

Except as provided with respect to any other class or series of shares of our stock and subject to the provisions of our charter regarding restrictions on the transfer and ownership of shares of common stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, the holders of our common stock possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of our outstanding shares of stock entitled to vote thereon can elect all of the directors then standing for election. Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, or engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter, unless a lesser percentage (but not less than a majority of all the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval by a majority of all the votes entitled to be cast on the matter for the matters described in the preceding sentence, except for certain charter amendments related to the removal of our directors, the classification and issuance of common and preferred stock and the restrictions on transfer and ownership of shares.

#### **Dividends, Liquidation and Other Rights**

All of our outstanding shares of common stock are duly authorized, fully paid and nonassessable. Holders of our shares of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. They also are entitled to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock and to the provisions of our charter regarding restrictions on ownership and transfer of our stock.

Holders of our shares of common stock have no appraisal, preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer and ownership of capital stock contained in our charter and to the ability of the board of directors to create shares of common stock with differing voting rights, all shares of common stock have equal dividend, liquidation and other rights.

#### **Power to Issue Additional Shares of Common Stock and Preferred Stock**

Our charter also authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, to classify and

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reclassify any unissued shares of our common stock and preferred stock into any other classes or series of classes of our stock, to establish the number of shares in each class or series and to set the terms, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such class or series. We believe that the power of our board of directors to take these actions provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as our common stock, are available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock that our common stockholders or otherwise believe to be in their best interest.

**Restrictions on Ownership and Transfer**

In order to qualify as a REIT under the Internal Revenue Code, our shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, no more than 50% of the value of our outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of any taxable year. In addition, if certain disqualified organizations hold our stock, although the law on the matter is unclear, a tax might be imposed on us if a portion of our assets is treated as a taxable mortgage pool. In addition, a tax will be imposed on us if certain disqualified organizations hold our stock and we hold a residual interest in a real estate mortgage investment conduit, or REMIC.

To help us to qualify as a REIT, our charter, subject to certain exceptions, contains restrictions on the number of shares of our capital stock that a person may own and prohibits certain entities from owning our stock. As amended, our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, either (i) more than 9.9% in value of the aggregate of our outstanding shares of capital stock or (ii) more than 9.9% in value or number of shares, whichever is more restrictive, of the aggregate of shares of our outstanding common stock. Our board of directors is permitted under our charter to increase or decrease the common stock ownership limit and the aggregate stock ownership limit from time to time, and to waive these ownership limits on a case by case basis so long as the waiver will not allow five or fewer individuals to beneficially own more than 49.9% in value of our outstanding capital stock or otherwise cause us to fail to comply with applicable REIT ownership requirements under the Internal Revenue Code. Our charter prohibits the following disqualified organizations from owning our stock: the United States; any state or political subdivision of the United States; any foreign government; any international organization; any agency or instrumentality of any of the foregoing; any other tax-exempt organization, other than a farmer's cooperative described in Section 521 of the Internal Revenue Code, that is exempt from both income taxation and from taxation under the unrelated business taxable income provisions of the Internal Revenue Code and any rural electrical or telephone cooperative.

Our charter also prohibits any person from (a) beneficially or constructively owning shares of our capital stock that would result in our being closely held under Section 856(h) of the Internal Revenue Code, and (b) transferring shares of our capital stock if such transfer would result in our capital stock being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire beneficial ownership of shares of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing restrictions on transfer and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our board of directors, in its sole discretion, may exempt a person from the above ownership limits and any of the restrictions described in the first sentence of the paragraph directly above. However, the board of directors

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may not grant an exemption to any person unless the board of directors obtains such representations, covenants and undertakings as the board of directors may deem appropriate in order to determine that granting the exemption would not result in our losing our status as a REIT. As a condition of granting the exemption, our board of directors may require a ruling from the Internal Revenue Service, or IRS, or an opinion of counsel, in either case in form and substance satisfactory to the board of directors, in its sole discretion, in order to determine or ensure our status as a REIT.

Any transfer that results in our shares of stock being owned by fewer than 100 persons will be void. However, if any transfer of our shares of stock occurs which, if effective, would result in any person beneficially or constructively owning shares of stock in excess or in violation of the above transfer or ownership limitations, known as a prohibited owner, then that number of shares of stock, the beneficial or constructive ownership of which otherwise would cause such person to violate the transfer or ownership limitations (rounded up to the nearest whole share), will be automatically transferred to a charitable trust for the exclusive benefit of a charitable beneficiary, and the prohibited owner will not acquire any rights in such shares. This automatic transfer will be considered effective as of the close of business on the business day before the violative transfer. If the transfer to the charitable trust would not be effective for any reason to prevent the violation of the above transfer or ownership limitations, then the transfer of that number of shares of stock that otherwise would cause any person to violate the above limitations will be void. Shares of stock held in the charitable trust will continue to constitute issued and outstanding shares of our stock. The prohibited owner will not benefit economically from ownership of any shares of stock held in the charitable trust, will have no rights to dividends or other distributions and will not possess any rights to vote or other rights attributable to the shares of stock held in the charitable trust. The trustee of the charitable trust will be designated by us and must be unaffiliated with us or any prohibited owner and will have all voting rights and rights to dividends or other distributions with respect to shares of stock held in the charitable trust, and these rights will be exercised for the exclusive benefit of the trust's charitable beneficiary. Any dividend or other distribution paid before our discovery that shares of stock have been transferred to the trustee will be paid by the recipient of such dividend or distribution to the trustee upon demand, and any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or distribution so paid to the trustee will be held in trust for the trust's charitable beneficiary. Subject to Maryland law, effective as of the date that such shares of stock have been transferred to the trustee, the trustee, in its sole discretion, will have the authority to:

rescind as void any vote cast by a prohibited owner prior to our discovery that such shares have been transferred to the trustee; and

recast such vote in accordance with the desires of the trustee acting for the benefit of the trust's beneficiary.

However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast such vote.

Within 20 days of receiving notice from us that shares of stock have been transferred to the charitable trust, and unless we buy the shares first as described below, the trustee will sell the shares of stock held in the charitable trust to a person, designated by the trustee, whose ownership of the shares will not violate the ownership limitations in our charter. Upon the sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary. The prohibited owner will receive the lesser of:

the price paid by the prohibited owner for the shares or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the charitable trust (for example, in the case of a gift or devise), the market price of the shares on the day of the event causing the shares to be held in the charitable trust; and

the price per share received by the trustee from the sale or other disposition of the shares held in the charitable trust (less any commission and other expenses of a sale).

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The trustee may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. Any net sale proceeds in excess of the amount payable to the prohibited owner will be paid immediately to the charitable beneficiary. If, before our discovery that shares of stock have been transferred to the charitable trust, such shares are sold by a prohibited owner, then:

such shares will be deemed to have been sold on behalf of the charitable trust; and

to the extent that the prohibited owner received an amount for such shares that exceeds the amount that the prohibited owner was entitled to receive as described above, the excess must be paid to the trustee upon demand.

In addition, shares of stock held in the charitable trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of:

the price per share in the transaction that resulted in such transfer to the charitable trust (or, in the case of a gift or devise, the market price at the time of the gift or devise); and

the market price on the date we, or our designee, accept such offer.

We may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. We may pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We will have the right to accept the offer until the trustee has sold the shares of stock held in the charitable trust. Upon such a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee will be paid to the charitable beneficiary.

All certificates representing shares of our capital stock will bear a legend referring to the restrictions described above.

Every holder of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) in value of all classes or series of our capital stock, including shares of common stock, within 30 days after the end of each taxable year, will be required to give written notice to us stating the name and address of such holder, the number of shares of each class and series of shares of our stock that the holder beneficially owns and a description of the manner in which the shares are held. Each holder shall provide to us such additional information as we may request in order to determine the effect, if any, of the holder's beneficial ownership on our status as a REIT and to ensure compliance with our ownership limitations. In addition, each stockholder shall upon demand be required to provide to us such information as we may request, in good faith, in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

Our ownership limitations could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or might otherwise be in the best interest of our stockholders.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our shares of common stock is American Stock Transfer & Trust Company, LLC.



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### **DESCRIPTION OF PREFERRED STOCK**

*The following summary description of our preferred stock does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our charter and our bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#).*

#### **General**

Our charter authorizes our board of directors to issue 200,000,000 shares of preferred stock, par value \$0.01 per share, in one or more series and with rights, preferences, privileges and restrictions that our board of directors may fix or designate without any further vote or action by our stockholders.

Our charter authorizes our board of directors to reclassify any unissued shares of common stock into preferred stock, to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by Maryland law and our charter to fix, subject to our charter restrictions on transfer and ownership, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our board could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for you or otherwise be in your best interest.

#### **Terms**

When we issue preferred stock, it will be fully paid and non-assessable. The preferred stock will not have any preemptive rights.

Articles supplementary that will become part of our charter will reflect the specific terms of any new series of preferred stock offered. A prospectus supplement will describe these specific terms, including:

the title and stated value;

the number of shares, liquidation preference and offering price;

the dividend rate, dividend periods and payment dates;

the date on which dividends begin to accrue or accumulate;

any auction and remarketing procedures;

any retirement or sinking fund requirement;

the price and the terms and conditions of any redemption right;

any listing on any securities exchange;

the price and the terms and conditions of any conversion or exchange right;

any voting rights;

the relative ranking and preferences as to dividends, liquidation, dissolution or winding up;

any limitations on issuing any series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividends, liquidation, dissolution or winding up;

any limitations on direct or beneficial ownership and restrictions on transfer; and

any other specific terms, preferences, rights, limitations or restrictions.

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**Restrictions on Ownership and Transfer; Change of Control Provisions**

As discussed above under Description of Common Stock Restrictions on Ownership and Transfer, our charter contains restrictions on ownership and transfers of our capital stock. In addition, the articles supplementary designating the terms of each series of preferred stock may also contain additional provisions restricting the ownership and transfer of the preferred stock. The prospectus supplement will specify any additional ownership limitation relating to a series of preferred stock.

For a discussion of provisions in our charter that may have the effect of delaying, deferring or preventing a change of control, see Certain Provisions of Maryland Law and of our Charter and Bylaws.

**Transfer Agent**

The prospectus supplement will identify the transfer agent and registrar for the preferred stock.

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**DESCRIPTION OF DEBT SECURITIES**

**General**

The debt securities offered by this prospectus will be our direct unsecured general obligations. This prospectus describes certain general terms of the debt securities offered through this prospectus. In the following discussion, we refer to any of our direct unsecured general obligations as the Debt Securities. When we offer to sell a particular series of Debt Securities, we will describe the specific terms of that series in a prospectus supplement or any free writing prospectus. The Debt Securities will be issued under an open-ended Indenture (for Debt Securities) between us and a trustee to be selected by us at or about the time we offer our Debt Securities. The open-ended Indenture (for Debt Securities) is incorporated by reference into the registration statement of which this prospectus is a part and is filed as an exhibit to the registration statement. In this prospectus we refer to the Indenture (for Debt Securities) as the Debt Securities Indenture. We refer to the trustee under any Debt Securities Indenture as the Debt Securities Trustee.

The prospectus supplement or any free writing prospectus applicable to a particular series of Debt Securities may state that a particular series of Debt Securities will be our subordinated obligations. The form of Debt Securities Indenture referred to above includes optional provisions (designated by brackets ( [ ] )) that we would expect to appear in a separate indenture for subordinated debt securities in the event we issue subordinated debt securities. In the following discussion, we refer to any of our subordinated obligations as the Subordinated Debt Securities. Unless the applicable prospectus supplement or any free writing prospectus provides otherwise, we will use a separate Debt Securities Indenture for any Subordinated Debt Securities that we may issue. Our Debt Securities Indenture will be qualified under the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act, and you should refer to the Trust Indenture Act for the provisions that apply to the Debt Securities.

We have summarized selected provisions of the Debt Securities Indenture below. Each Debt Securities Indenture will be independent of any other Debt Securities Indenture unless otherwise stated in a prospectus supplement or any free writing prospectus. The summary that follows is not complete and the summary is qualified in its entirety by reference to the provisions of the applicable Debt Securities Indenture. You should consult the applicable Debt Securities, Debt Securities Indenture, any supplemental indentures, officers' certificates and other related documents for more complete information on the Debt Securities. These documents appear as exhibits to, or are incorporated by reference into, the registration statement of which this prospectus is a part, or will appear as exhibits to other documents that we will file with the SEC, which will be incorporated by reference into this prospectus. In the summary below, we have included references to applicable section numbers of the Debt Securities Indenture so that you can easily locate these provisions.

**Ranking**

Our Debt Securities that are not designated Subordinated Debt Securities will be effectively subordinated to all secured indebtedness that we have outstanding from time to time to the extent of the value of the collateral securing such secured indebtedness. Our Debt Securities that are designated Subordinated Debt Securities will be subordinate to all outstanding secured indebtedness as well as Debt Securities that are not designated Subordinated Debt Securities. We incur indebtedness from time to time to finance many of our assets pursuant to repurchase agreements and certain other structured finance instruments, such as the trust preferred securities issued by our subsidiary, Hypotheca Capital, LLC, or Hypotheca, pursuant to which we guarantee the payment of notes by Hypotheca that back the trust preferred securities issued by it. This indebtedness is deemed to be secured indebtedness. As a result, we have a significant amount of secured indebtedness at any given time in relation to our total assets. The Debt Securities Indenture does not limit the amount of secured indebtedness that we may issue or incur.

Our ability to meet our financial obligations with respect to any future Debt Securities, and cash needs generally, is dependent on our operating cash flow, our ability to access various sources of short- and long-term

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liquidity, including repurchase agreements, financing and the capital markets. Holders of our Debt Securities will effectively have a junior position to claims of our creditors, including trade creditors, debt holders, secured creditors, taxing authorities and guarantee holders.

**Provisions of a Particular Series**

The Debt Securities may from time to time be issued in one or more series. You should consult the prospectus supplement or free writing prospectus relating to any particular series of Debt Securities for the following information:

the title of the Debt Securities;

any limit on the aggregate principal amount of the Debt Securities of the series of which they are a part;

the date(s), or method for determining the date(s), on which the principal of the Debt Securities will be payable;

the rate, including the method of determination, if applicable, at which the Debt Securities will bear interest, if any, and:

the date from which the interest will accrue;

the dates on which we will pay interest;

to whom the interest is payable, if other than the registered holder;

our ability, if any, to defer interest payments and any related restrictions during any interest deferral period; and

the record date for any interest payable on any interest payment date;

the place where:

the principal of, premium, if any, and interest on the Debt Securities will be payable;

you may register the transfer of the Debt Securities;

you may exchange the Debt Securities; and

you may serve notices and demands upon us regarding the Debt Securities;

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the security registrar for the Debt Securities and whether the principal of the Debt Securities is payable without presentment or surrender of them;

the terms and conditions upon which we may elect to redeem any Debt Securities, including any replacement capital or similar covenants limiting our ability to redeem any Subordinated Debt Securities;

the denominations in which we may issue Debt Securities, if other than \$1,000 and integral multiples of \$1,000;

the terms and conditions upon which the Debt Securities must be redeemed or purchased due to our obligations pursuant to any sinking fund or other mandatory redemption or tender provisions, or at the holder's option, including any applicable exceptions to notice requirements;

the currency, if other than United States currency, in which payments on the Debt Securities will be payable;

the terms according to which elections can be made by us or the holder regarding payments on the Debt Securities in currency other than the currency in which the Debt Securities are stated to be payable;

if any Debt Securities are denominated in a currency other than U.S. dollars or in a composite currency, the obligations or instruments that will be considered eligible obligations with respect to such Debt

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Securities and any additional provisions for the reimbursement of the Company's indebtedness with respect to such Debt Securities after the satisfaction or discharge thereof;

if payments are to be made on the Debt Securities in securities or other property, the type and amount of the securities and other property or the method by which the amount shall be determined;

the manner in which we will determine any amounts payable on the Debt Securities that are to be determined with reference to an index or other fact or event ascertainable outside of the applicable indenture;

if other than the entire principal amount, the portion of the principal amount of the Debt Securities payable upon declaration of acceleration of their maturity;

any addition to the events of default applicable to any Debt Securities and any addition to our covenants for the benefit of the holders of the Debt Securities;

the terms applicable to any rights to convert Debt Securities into or exchange them for other of our securities or those of any other entity;

whether we are issuing Debt Securities as global securities, and if so:

the terms and conditions upon which the global securities may be exchanged for certificated Debt Securities;

the depositary for the global securities; and

the form of legend to be set forth on the global securities;

whether we are issuing the Debt Securities as bearer certificates;

any limitations on transfer or exchange of Debt Securities or the right to obtain registration of their transfer, and the terms and amount of any service charge required for registration of transfer or exchange;

any exceptions to the provisions governing payments due on legal holidays, or any variations in the definition of business day with respect to the Debt Securities;

any collateral security, assurance, guarantee or other credit enhancement applicable to the Debt Securities;

any other terms of the Debt Securities not in conflict with the provisions of the applicable Debt Securities Indenture; and

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the material federal income tax consequences applicable to the Debt Securities.  
For more information, see Section 3.01 of the applicable Debt Securities Indenture.

Debt Securities may be sold at a substantial discount below their principal amount. You should consult the applicable prospectus supplement or free writing prospectus for a description of certain material federal income tax considerations that may apply to Debt Securities sold at an original issue discount or denominated in a currency other than U.S. dollars.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, the covenants contained in the applicable indenture will not afford holders of Debt Securities protection in the event we have a change in control or are involved in a highly-leveraged transaction.

### **Subordination**

The applicable prospectus supplement or free writing prospectus may provide that a series of Debt Securities will be Subordinated Debt Securities, subordinate and junior in right of payment to all of our Senior



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Indebtedness, as defined below. If so, we will issue these securities under a separate Debt Securities Indenture for Subordinated Debt Securities. For more information, see Article XV of the form of Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, in the event:

there occur certain acts of bankruptcy, insolvency, liquidation, dissolution or other winding up of our company;

any Senior Indebtedness is not paid when due;

any applicable grace period with respect t