

ENCORE CAPITAL GROUP INC
Form 8-K
December 12, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): December 6, 2012

ENCORE CAPITAL GROUP, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

000-26489
(Commission

File Number)

48-1090909
(IRS Employer

Identification No.)

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3111 Camino Del Rio North, Suite 1300, San Diego, California
(Address of Principal Executive Offices)
(877) 445-4581

92108
(Zip Code)

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

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

Item 1.01. Entry into a Material Definitive Agreement.

On November 27, 2012, Encore Capital Group, Inc. (the Company) sold \$100,000,000 in aggregate principal amount of the Company's 3.00% Convertible Senior Notes due 2017 (the Notes) in a private placement transaction. The Notes were issued pursuant to an Indenture, dated November 27, 2012, between the Company and Union Bank, N.A., as trustee. On December 6, 2012, the initial purchasers exercised, in full, their option to purchase an additional \$15,000,000 in aggregate principal amount of the Notes (the Additional Notes). The Company today announced the closing of the sale of the Additional Notes. A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

In connection with the initial purchasers' exercise of their option to purchase the Additional Notes, the Company entered into privately negotiated convertible note hedge transactions (together, the Convertible Note Hedge Transactions) with each of Deutsche Bank AG, London Branch, RBC Capital Markets, LLC and Société Générale (together, the Option Counterparties). The Convertible Note Hedge Transactions, collectively, cover, subject to customary anti-dilution adjustments substantially similar to those applicable to the Notes, the number of shares of the Company's common stock underlying the Additional Notes, as described below. Concurrently with entering into the Convertible Note Hedge Transactions, the Company also entered into separate, privately negotiated warrant transactions (together, the Warrant Transactions) with each of the Option Counterparties, whereby the Company sold to the Option Counterparties warrants to purchase, collectively, subject to customary anti-dilution adjustments, up to the same number of shares of the Company's common stock as in the Convertible Note Hedge Transactions. Subject to certain conditions, the Company may settle the warrants in cash or on a net-share basis.

The Convertible Note Hedge Transactions are expected generally to reduce the potential dilution and/or offset the potential cash payments the Company is required to make in excess of the principal amount upon conversion of the Additional Notes in the event that the market price per share of the Company's common stock, as measured under the terms of the Convertible Note Hedge Transactions, is greater than the strike price of the Convertible Note Hedge Transactions, which initially corresponds to the conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes. If, however, the market price per share of the Company's common stock, as measured under the terms of the Warrant Transactions, exceeds the strike price of the warrants, there would nevertheless be dilution to the extent that such market price exceeds the strike price of the warrants, unless the Company elects, subject to certain conditions, to settle the Warrant Transactions in cash. The strike price of the Warrant Transactions will initially be \$44.1875 per share of the Company's common stock and is subject to certain adjustments under the terms of the Warrant Transactions.

The Convertible Note Hedge Transactions and the Warrant Transactions are separate transactions, in each case, entered into by the Company with the Option Counterparties, and are not part of the terms of the Notes and will not affect any holder's rights under the Notes. Holders of the Notes will not have any rights with respect to the Convertible Note Hedge Transactions or the Warrant Transactions.

Copies of the confirmations relating to the Convertible Note Hedge Transactions and Warrant Transactions are attached as exhibits to this report and are incorporated by reference (and this description is qualified in its entirety by reference to such documents).

The net proceeds from the sale of the Additional Notes were approximately \$14.6 million, after deducting estimated fees and expenses and the initial purchasers' discounts and commissions. The Company used approximately \$1.5 million of the net proceeds to pay the cost of the Convertible Note Hedge Transactions, taking into account the proceeds to the Company of the Warrant Transactions, and the balance of the net proceeds for general corporate purposes.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference.

As previously disclosed, on November 5, 2012, the Company entered into an Amended and Restated Credit Agreement (the "Restated Credit Agreement"), by and among the Company, the several banks and other financial institutions and lenders from time to time party thereto and listed on the signature pages thereof, and SunTrust Bank, as administrative agent and collateral agent. The Restated Credit Agreement includes provisions allowing the Company to request incremental loan facilities advances of up to \$200.0 million. On December 6, 2012, the Company entered into an Incremental Facility Agreement with Barclays Bank PLC, providing for an incremental loan facility of \$20.0 million. All other terms of the Restated Credit Agreement remain unchanged. A copy of the Incremental Facility Agreement is attached as an exhibit to this report and is incorporated by reference (and this description is qualified in its entirety by reference to such document).

Item 3.02. Unregistered Sale of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The Company offered and sold the Additional Notes to the initial purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), and for resale by the initial purchasers to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The Company relied on these exemptions from registration based in part on representations made by the initial purchasers in the purchase agreement.

The Company entered into the Warrant Transactions with the Option Counterparties in reliance on the exemption from registration provided by Section 4(2) of the Securities Act.

To the extent that any shares of common stock are issued upon conversion of the Additional Notes or exercise of the warrants by the Options Counterparties pursuant to the Warrant Transactions, they will be issued in transactions anticipated to be exempt from registration under the Securities Act by virtue of Section 3(a)(9) thereof, because no commission or other remuneration is expected to be paid in connection with conversion of the Additional Notes and any resulting issuance of shares of common stock.

Item 8.01. Other Events.

The Company today announced the closing of the sale of the Additional Notes. A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

- 10.1 Letter Agreement, dated December 6, 2012, between Deutsche Bank AG, London Branch and Encore Capital Group, Inc., regarding the Additional Call Option Transaction
- 10.2 Letter Agreement, dated December 6, 2012, between RBC Capital Markets, LLC and Encore Capital Group, Inc., regarding the Additional Call Option Transaction
- 10.3 Letter Agreement, dated December 6, 2012, between Société Générale and Encore Capital Group, Inc., regarding the Additional Call Option Transaction
- 10.4 Letter Agreement, dated December 6, 2012, between Deutsche Bank AG, London Branch and Encore Capital Group, Inc., regarding the Additional Warrant Transaction
- 10.5 Letter Agreement, dated December 6, 2012, between RBC Capital Markets, LLC and Encore Capital Group, Inc., regarding the Additional Warrant Transaction
- 10.6 Letter Agreement, dated December 6, 2012, between Société Générale and Encore Capital Group, Inc., regarding the Additional Warrant Transaction
- 10.7 Incremental Facility Agreement, dated December 6, 2012, by and between Encore Capital Group, Inc., Barclays Bank PLC, SunTrust Bank and each of the guarantors party thereto.
- 99.1 Press release, dated December 11, 2012.

SIGNATURE

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

ENCORE CAPITAL GROUP, INC.

Date: December 11, 2012

/s/ Paul Grinberg

Paul Grinberg

Executive Vice President, Chief Financial Officer and Treasurer

EXHIBIT INDEX

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