

CAPSTEAD MORTGAGE CORP  
Form 424B5  
June 01, 2011  
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Filed pursuant to Rule 424(b)(5)  
Registration No. 333-156073

Prospectus Supplement

(To prospectus dated June 1, 2011)

# Capstead Mortgage Corporation

## 2,000,000 Shares

### \$1.26 Cumulative Convertible Preferred Stock, Series B

Through this prospectus supplement, Capstead Mortgage Corporation may offer and sell from time to time up to 2,000,000 shares of our \$1.26 Cumulative Convertible Preferred Stock, Series B, or Series B Preferred Stock. Our Series B Preferred Stock is listed on the New York Stock Exchange under the symbol CMOPRB.

We may sell all or a portion of the shares of stock offered pursuant to this prospectus supplement through agents, to or through underwriters or dealers. We are a party to a sales agreement with Brinson Patrick Securities Corporation as sales manager, relating to the sale of shares offered pursuant to this prospectus supplement. The sales manager is not required to sell any specific number or dollar amount of shares, but will use its best efforts to sell the shares offered by this prospectus supplement, subject to direction from us as to amount and timing. Such sales will be at market prices prevailing at the time of the sale. On May 31, 2011, the last reported sales price on the New York Stock Exchange of our Series B Preferred Stock was \$14.84 per share. The compensation to the sales manager for sales of Series B Preferred Stock pursuant to this prospectus supplement will be at commission rates ranging from 1.0% to 3.0% of the gross sales price per share, depending upon the aggregate sales proceeds raised by the sales manager under the sales agreement and the timing of such sales. The sales manager will be deemed to be an underwriter, within the meaning of the Securities Act, in connection with any sales of Preferred Stock on our behalf. See Description of Sales Agreement and Plan of Distribution.

**Investing in these securities involves various risks. Risks associated with an investment in these securities are described in the accompanying prospectus and in certain of our filings with the Securities and Exchange Commission, as described under Risk Factors on page S-2 of the accompanying prospectus.**

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.

**The date of this prospectus supplement is June 1, 2011.**

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**IMPORTANT NOTICE ABOUT INFORMATION IN THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is the prospectus supplement, which describes the specific terms of this offering and also adds to and updates information contained in the accompanying base prospectus and the documents incorporated by reference into this prospectus supplement and the base prospectus. The second part, the base prospectus, gives more general information about securities we may offer from time to time, some of which does not apply to this offering. Generally, when we refer only to the prospectus, we are referring to both parts combined, and when we refer to the accompanying prospectus, we are referring to the base prospectus.

If the description of this offering varies between this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement.

You should rely only on the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with information that is different. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and seeking offers to buy, shares of our Series B Preferred Stock only in jurisdictions where offers and sales are permitted. The information contained in or incorporated by reference in this document is accurate only as of the date such information was issued, regardless of the time of delivery of this prospectus supplement or any sale of our Series B Preferred Stock.

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**OUR COMPANY**

We are a self-managed real estate investment trust, or REIT, formed in 1985 and based in Dallas, Texas. We earn income from investing in a leveraged portfolio of residential mortgage pass-through securities consisting almost exclusively of adjustable-rate mortgage ( ARM ) securities issued and guaranteed by government-sponsored enterprises, either Fannie Mae or Freddie Mac (together, the GSEs ), or by an agency of the federal government, Ginnie Mae. Agency-guaranteed residential mortgage pass-through securities carry an implied AAA rating with limited, if any, credit risk, particularly in light of the conservatorship of the GSEs by the federal government.

Our investment strategy is to manage a conservatively leveraged portfolio of agency-guaranteed ARM securities that can produce attractive risk-adjusted returns over the long term, while reducing, but not eliminating, sensitivity to changes in interest rates. This strategy differentiates us from our peers because ARM securities reset to more current interest rates within a relatively short period of time allowing for the recovery of financing spreads diminished during periods of rising interest rates and smaller fluctuations in portfolio values from changes in interest rates compared to portfolios that contain a significant amount of fixed-rate mortgage securities. From a credit-risk perspective, the credit quality of agency-guaranteed mortgage securities helps ensure that fluctuations in value due to credit risk should be limited and financing at reasonable rates and terms should remain available under stressed market conditions.

**THE OFFERING**

Issuer	Capstead Mortgage Corporation.
Series B Preferred Stock offered by us	Up to 2,000,000 shares.
Series B Preferred Stock to be outstanding after this offering	Up to 17,819,263 shares.
Manner of offering	Best efforts, at-the-market offering that may be made from time to time through Brinson Patrick Securities Corporation, as sales manager, subject to direction from us as to amount and timing. See Plan of Distribution beginning on page S-3.
NYSE symbol	CMOPRB
Use of proceeds	We intend to use the net proceeds from this offering for general corporate purposes, including, without limitation, repayment of maturing obligations, financing future acquisitions, capital expenditures and working capital. Pending any such uses, we may invest the net proceeds from the sale of any stock offered pursuant to this prospectus supplement in short-term investments, or may use the proceeds to reduce short-term indebtedness.
Risk factors	An investment in our Series B Preferred Stock involves various risks. Risks associated with an investment in these securities are described under the heading Risk Factors in our annual report on Form 10-K for the year ended December 31, 2010 and on page S-2 of this prospectus supplement.

Unless otherwise indicated, all offering information in this prospectus supplement is based on the number of shares of Series B Preferred Stock outstanding as of May 31, 2011.

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**RISK FACTORS**

*An investment in the Series B Preferred Stock involves various risks, including those described below and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010. Prospective investors should carefully consider such risk factors, together with all of the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus in determining whether to purchase the Series B Preferred Stock offered hereby.*

**Our Series B Preferred Stock is redeemable by us, in whole or in part, at any time at a cash redemption price equal to \$12.50 per share, plus all accrued and unpaid dividends to the date of redemption.**

We have the right to redeem any or all of the outstanding shares of our Series B Preferred Stock at any time for \$12.50 per share, plus all accrued and unpaid dividends. If you purchase shares of our Series B Preferred Stock for greater than the redemption price, you may suffer a loss on your investment if we elect to exercise our redemption rights.

**Our Series B Preferred Stock is subordinate to our debt, and your interests could be diluted by the issuance of additional preferred stock, including additional Series B Preferred Stock, and by other transactions.**

The Series B Preferred Stock is subordinate to all of our existing and future debt. Our future debt may include restrictions on our ability to pay dividends to preferred stockholders. Our charter currently authorizes the issuance of up to 100,000,000 shares of preferred stock in one or more series. The issuance of additional preferred stock on parity with or senior to the Series B Preferred Stock would dilute the interests of the holders of the Series B Preferred Stock, and any issuance of preferred stock on parity with or senior to the Series B Preferred Stock or of additional indebtedness could affect our ability to pay dividends on, redeem or pay the liquidation preference on the Series B Preferred Stock. None of the provisions relating to the Series B Preferred Stock limit our ability to incur indebtedness or to issue additional preferred stock on parity with the Series B Preferred Stock.

*As a holder of Series B Preferred Stock you have extremely limited voting rights.*

Your voting rights as a holder of Series B Preferred Stock are limited. Our common stock is currently the only class of our stock carrying full voting rights. Voting rights for holders of Series B Preferred Stock exist primarily with respect to (i) adverse changes in the terms of the Series B Preferred Stock, (ii) the creation of additional classes or series of preferred stock that are senior to the Series B Preferred Stock, (iii) any failure to pay dividends on the Series B Preferred Stock and (iv) the sale of all or substantially all of our assets (but in the case of clause (iv) only if 5,900,000 or more shares of Series B Preferred Stock remain outstanding).

*Listing on the NYSE does not guarantee a market for our Series B Preferred Stock, and the market price and trading volume of our Series B Preferred Stock may fluctuate significantly.*

The market determines the trading price for the Series B Preferred Stock and may be influenced by many factors, including our history of paying dividends on the Series B Preferred Stock, variations in our financial results, the market for similar securities, investors' perceptions of us, our issuance of additional preferred equity or indebtedness and general economic, industry, interest rate and market conditions. Because the Series B Preferred Stock carries a fixed dividend rate, its value in the secondary market will be influenced by changes in interest rates and will tend to move inversely to such changes. In particular, an increase in market interest rates will result in higher yields on other financial instruments and may lead purchasers of Series B Preferred Stock to demand a higher yield on the price paid for the Series B Preferred Stock, which could adversely affect the market price of the Series B Preferred Stock. Historically, the daily trading volume of the Series B Preferred Stock has been lower than the trading volume of many other securities. As a result, investors who desire to liquidate substantial holdings of the Series B Preferred Stock at a single point in time may find that they are unable to dispose of their shares in the market without causing a substantial decline in the market price of such shares.

**USE OF PROCEEDS**

The net proceeds from the stock offered by us will be available for general corporate purposes, including, without limitation, repayment of maturing obligations, financing future acquisitions, capital expenditures and working capital. Pending any such uses, we may invest the net proceeds from the sale of any stock offered pursuant to this prospectus supplement or related prospectus in short-term investments, or may use them to reduce short-term indebtedness.



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**DESCRIPTION OF SALES AGREEMENT**

We may sell our Series B Preferred Stock from time to time (1) through arrangements with underwriters or dealers, (2) directly to one or more purchasers, or (3) through agents. We have entered into a sales agreement with Brinson Patrick Securities Corporation with respect to sales of shares of our common stock and our Series B Preferred Stock, and we may enter into other sales agreements with other sales agents or underwriters in the future. Under the terms of the Brinson Patrick sales agreement, we may issue and sell shares of our Series B Preferred Stock from time to time through Brinson Patrick, as our sales agent. Brinson Patrick is not required to arrange for the purchase or sale of any specific number of shares or dollar amount of Series B Preferred Stock. We have agreed to provide indemnification and contribution to Brinson Patrick against certain liabilities, including liabilities under the Securities Act.

All sales made pursuant to the Brinson Patrick sales agreement will be reported in our Securities Exchange Act of 1934 reports.

**Certain Terms of the Sales Agency Agreement**

Subject to direction from the company as to the amount and timing of sales, sales pursuant to the Brinson Patrick sales agreement may be effected on a daily basis. The compensation to Brinson Patrick for sales of our stock under the Brinson Patrick sales agreement, including both common stock and Series B Preferred Stock, shall be at the following commission rates:

3.0% of the gross sales price per share ( sales proceeds ) for the first \$8 million of aggregate sales proceeds raised under the sales agreement in each sales period;

2.5% of sales proceeds for the next \$4 million of aggregate sales proceeds raised in each sales period;

2.0% of sales proceeds for the next \$88 million of aggregate sales proceeds raised in each sales period; and

1.0% of sales proceeds for any additional aggregate sales proceeds raised in each sales period.

For purposes of determining the appropriate commission rates, the initial sales period began on March 10, 2008 and will end on December 31, 2012, and each subsequent sales period shall be for a two year period, commencing on January 1 and ending on December 31 of the following calendar year. The remaining proceeds, after further deduction for any transaction fees imposed by any governmental or self-regulatory organization in respect to such sale shall constitute the net proceeds to us for such shares of stock. The commission rate is currently set at 1.0% of sales.

The offering of Series B Preferred Stock pursuant to the Brinson Patrick sales agreement will terminate upon the termination of the Brinson Patrick sales agreement. The Brinson Patrick sales agreement may be terminated by us or by Brinson Patrick upon written notice and in certain other circumstances specified therein.

**PLAN OF DISTRIBUTION**

In connection with the sale of the Series B Preferred Stock on our behalf under the Brinson Patrick sales agreement, Brinson Patrick will be deemed to be an underwriter within the meaning of the Securities Act of 1933, as amended (the Securities Act ), and the compensation payable to Brinson Patrick under the Brinson Patrick sales agreement will be deemed to be an underwriting commission or discount; however, Brinson Patrick is not purchasing or selling any Series B Preferred Stock nor is it required to arrange for the purchase or sale of any specific number of shares or dollar amount of Series B Preferred stock. We have separately agreed to provide indemnification and contribution to Brinson Patrick against certain civil liabilities, including liabilities under the Securities Act. Brinson Patrick may engage in transactions with, or perform services for, us in the ordinary course of business.

We will maintain a trading account at the clearing agent designated by Brinson Patrick to facilitate the transactions contemplated by the Brinson Patrick sales agreement. The net proceeds from the sale of the Series B Preferred Stock under the Brinson Patrick sales agreement will be available in the trading account on the third business day (or such other day as is industry practice for regular-way trading) following each sale of Series B Preferred Stock (each, a Settlement Date ). We will effect the delivery of the applicable number of shares of Series B Preferred Stock

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to an account designated by Brinson Patrick at The Depository Trust Company on or before the settlement date of each sale hereunder. Brinson Patrick's compensation will be withheld from the sales proceeds on each settlement date and will be paid to Brinson Patrick.

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The offering of Series B Preferred Stock pursuant to the Brinson Patrick sales agreement will terminate upon the termination of the Brinson Patrick sales agreement. The Brinson Patrick sales agreement may be terminated by us or by Brinson Patrick upon written notice and in certain other circumstances specified therein.

**Commissions**

The following tables show the public offering prices, underwriting commissions and proceeds, before expenses, to us, assuming all 2,000,000 shares of Series B Preferred Stock are sold at \$14.84 per share, the last reported sales prices of our Series B Preferred Stock on the New York Stock Exchange on May 31, 2011.

<b>Series B Preferred Stock</b>		
	<b>Per Share*</b>	<b>Total**</b>
Public offering Price	\$ 14.8400	\$ 29,680,000
Underwriting commissions (1.0%)	\$ 0.1484	\$ 296,800
Proceeds, before expenses, to us	\$ 14.6916	\$ 29,383,200

\* This is an offering that will be made, if at all, from time to time at the then-prevailing market prices. Therefore, there can be no assurances that the public offering prices, underwriting commissions, and proceeds, before expenses, will be as set forth above. The commissions are computed based upon the current applicable rate under the Brinson Patrick sales agreement.

\*\* Based upon the commission rate for aggregate proceeds in excess of \$100 million, which is the commission rate applicable as of the date of this prospectus supplement through December 31, 2012.

The expenses of the offering, not including underwriting commissions, are estimated at less than \$50,000 and are payable by us.

**LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Andrews Kurth LLP, Dallas, Texas. Certain Maryland law matters in connection with this offering will be passed upon for us by Hogan Lovells US LLP (US). Andrews Kurth LLP will rely on the opinion of Hogan Lovells US LLP (US) as to all matters of Maryland law.

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**PROSPECTUS**

**\$305,309,336**

**COMMON STOCK**

**PREFERRED STOCK**

**DEBT SECURITIES**

**WARRANTS**

Capstead Mortgage Corporation intends to offer and sell from time to time the securities described in this prospectus. The total offering price of the securities described in this prospectus will not exceed \$305,309,336 in the aggregate.

We will provide the specific terms of any securities we may offer in a supplement to this prospectus. You should carefully read this prospectus and any applicable prospectus supplement before deciding to invest in these securities.

The securities may be offered directly, through agents designated by us from time to time, or through underwriters or dealers, on a continuous or delayed basis. We may make any sales of our common shares under this prospectus, if any, on or through the facilities of the New York Stock Exchange, to or through a market maker, or to or through an electronic communications network, at market prices prevailing at the time of sale, or in any other manner permitted by law (including, without limitation, privately negotiated transactions).

Our common stock is listed on the New York Stock Exchange under the symbol CMO. On May 31, 2011, the last reported sale price of our common stock as reported was \$13.27 per share.

**Investing in our securities involves risks. See Risk Factors on page 1 of this prospectus for information regarding risks associated with an investment in our 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 June 1, 2011.**

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**You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. An offer to sell these securities will not be made in any jurisdiction where the offer and sale is not permitted. You should assume that the information appearing in this prospectus, as well as information we previously filed with the Securities and Exchange Commission and incorporated by reference, is accurate as of the date on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.**

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### **ABOUT THIS PROSPECTUS**

This prospectus is part of a shelf registration statement. We may sell, from time to time, in one or more offerings, any combinations of the securities described in this prospectus. This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities under this prospectus, we will provide a prospectus supplement that contains specific information about the terms of the securities. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading **Where You Can Find More Information**.

The total dollar amount of the securities sold under this prospectus will not exceed \$305,309,339.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other documents with the Securities and Exchange Commission under the Securities Exchange Act of 1934. You may read and copy any materials that we file with the SEC without charge at the public reference room of the Securities and Exchange Commission, 450 Fifth Street, N.W., Room 1024, Washington, DC 20549. Information about the operation of the public reference room may be obtained by calling the Securities and Exchange Commission at 1-800-SEC-0330. Also, the SEC maintains an internet website that contains reports, proxy and information statements, and other information regarding issuers, including Capstead, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at [www.sec.gov](http://www.sec.gov).

We also make available free of charge on or through our internet website ([www.capstead.com](http://www.capstead.com)) our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission. This prospectus does not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our company and our securities, reference is made to the registration statement, including the exhibits and schedules to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by reference to the exhibit to which the reference relates.

### **INCORPORATION OF INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to other documents that we file with the SEC. These incorporated documents contain important business and financial information about us that is not included in or delivered with this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information filed with the SEC will update and supersede this information.

We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, until the offering of securities covered by this prospectus is complete:

our Annual Report on Form 10-K for the year ended December 31, 2010;

our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011;

our Current Reports on Form 8-K, filed with the SEC on April 5, 2011 and May 5, 2011 (except Item 2.02 and Exhibit 99.2 thereto which were furnished and not filed).

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You may obtain copies of these documents at no cost by writing or telephoning us at the following address:

Investor Relations

Capstead Mortgage Corporation

8401 N. Central Expressway, Suite 800

Dallas, Texas 75225

(214) 874-2323

**A WARNING ABOUT FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, without limitation, any statement that may predict, forecast, indicate or imply future results, performance or achievements, and may contain the words believe, anticipate, expect, estimate, intend, project, will be, will likely continue, will likely occur, or words or phrases of similar meaning. Forward-looking statements are based largely on the expectations of management and are subject to a number of risks and uncertainties including, but not limited to, the following:

changes in general economic conditions;

fluctuations in interest rates and levels of mortgage prepayments;

the effectiveness of risk management strategies;

the impact of differing levels of leverage employed;

liquidity of secondary markets and credit markets;

the availability of financing at reasonable levels and terms to support investing on a leveraged basis;

the availability of new investment capital;

the availability of suitable qualifying investments from both an investment return and regulatory perspective;

changes in legislation or regulation affecting the GSEs and similar federal government agencies and related guarantees; and

increases in costs and other general competitive factors.

In addition to the above considerations, actual results and liquidity are affected by other risks and uncertainties which could cause actual results to be significantly different from those expressed or implied by any forward-looking statements included herein. It is not possible to identify all

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of the risks, uncertainties and other factors that may affect future results. In light of these risks and uncertainties, the forward-looking events and circumstances discussed herein may not occur and actual results could differ materially from those anticipated or implied in the forward-looking statements. Forward-looking statements speak only as of the date the statement is made and we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Accordingly, readers of this document are cautioned not to place undue reliance on any forward-looking statements included herein.

**Table of Contents****OUR COMPANY**

We are a self-managed real estate investment trust, or REIT, formed in 1985 and based in Dallas, Texas. We earn income from investing in a leveraged portfolio of residential mortgage pass-through securities consisting almost exclusively of adjustable-rate mortgage ( ARM ) securities issued and guaranteed by government-sponsored enterprises, either Fannie Mae or Freddie Mac (together, the GSEs ), or by an agency of the federal government, Ginnie Mae. Agency-guaranteed residential mortgage pass-through securities carry an implied AAA rating with limited, if any, credit risk, particularly in light of the conservatorship of the GSEs by the federal government.

Our investment strategy is to manage a conservatively leveraged portfolio of agency-guaranteed ARM securities that can produce attractive risk-adjusted returns over the long term, while reducing, but not eliminating, sensitivity to changes in interest rates. This strategy differentiates us from our peers because ARM securities reset to more current interest rates within a relatively short period of time allowing for the recovery of financing spreads diminished during periods of rising interest rates and smaller fluctuations in portfolio values from changes in interest rates compared to portfolios that contain a significant amount of fixed-rate mortgage securities. From a credit-risk perspective, the credit quality of agency-guaranteed mortgage securities helps ensure that fluctuations in value due to credit risk should be limited and financing at reasonable rates and terms should remain available under stressed market conditions.

We and our qualified REIT subsidiaries have elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended (the Code ), and intend to continue to do so. As a result of this election, we and our qualified REIT subsidiaries are not taxed at the corporate level on taxable income distributed to stockholders, provided that certain REIT qualification tests are met. Certain of our affiliates, which may be consolidated with us for financial reporting purposes, may not be consolidated for federal income tax purposes because such entities may elect taxable REIT subsidiary tax status. All taxable income of any such taxable REIT subsidiaries would be subject to federal and state income taxes, where applicable.

Our principal executive offices are located at 8401 N. Central Expressway, Suite 800, Dallas, Texas 75225. Our telephone number is (214) 874-2323. Our website is <http://www.capstead.com>. The contents of our website are not a part of this prospectus. Our shares of common stock are traded on the New York Stock Exchange, or the NYSE, under the symbol CMO.

**RISK FACTORS**

*An investment in our securities involves various risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K and the other information contained in this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of our securities.*

**USE OF PROCEEDS**

Unless otherwise indicated in a prospectus supplement, we expect to use the net proceeds from the sale of these securities for general corporate purposes.

**RATIOS OF NET INCOME TO COMBINED FIXED CHARGES****AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our historical ratios of net income to combined fixed charges and preferred stock dividends, for each of the periods indicated:

	Three Months Ended		Year Ended December 31,			
	March 31, 2011	2010	2009	2008	2007	2006
Ratio of net income to combined fixed charges and preferred stock dividends	2.51:1	2.39:1	1.73:1	1.38:1	1.02:1	*

\*

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For this period, net income (before fixed charges) was less than fixed charges and preferred stock dividends, and the coverage deficiency was approximately \$16,413,000.



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### **DESCRIPTION OF OUR CAPITAL STOCK**

#### **General**

We were formed under the laws of the State of Maryland. Rights of our stockholders are governed by the Maryland General Corporation Law, or MGCL, our charter and our bylaws. The following is a summary of the material provisions of our capital stock. Copies of our charter and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#).

#### **Authorized Stock**

Our charter provides that we may issue up to 250 million shares of voting common stock, par value \$.01 per share, and 100 million shares of preferred stock, par value \$.10 per share.

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

We believe that the power of our board of directors, without stockholder approval, to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock provides us with flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. The additional classes or series, as well as the common stock, will be available for issuance without further action by our stockholders, unless stockholder consent 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 does not intend to do so, it could authorize us to issue an additional class or series of stock that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our stockholders or otherwise be in their best interest.

#### **Restrictions on Ownership and Transfer**

Our charter provides that if our board of directors determines in good faith that the direct or indirect ownership of our stock has or may become concentrated to an extent which would cause us to fail to qualify or be qualified as a REIT under Sections 856(a)(5) or (6) of the Code, or similar provisions of successor statutes, we may redeem or repurchase any number of shares of common stock and/or preferred stock sufficient to maintain or bring such ownership into conformity with the Code and may refuse to transfer or issue shares of common stock and/or preferred stock to any person whose acquisition would result in our being unable to conform with the requirements of the Code. In general, Code Sections 856(a)(5) and (6) provide that, as a REIT, we must have at least 100 beneficial owners for 335 days of each taxable year and that we cannot qualify as a REIT if, at any time during the last half of our taxable year, more than 50% in value of our outstanding stock is owned, directly or indirectly, by or for not more than five individuals. In addition, our charter provides that we may redeem or refuse to transfer any shares of our capital stock to the extent necessary to prevent the imposition of a penalty tax as a result of ownership of those shares by certain disqualified organizations, including governmental bodies and tax-exempt entities that are not subject to tax on unrelated business taxable income. The redemption or purchase price for those shares shall be equal to the fair market value of those shares as reflected in the closing sales price for those shares if then listed on a national securities exchange, or the average of the closing sales prices for those shares if then listed on more than one national securities exchange, or if those shares are not then listed on a national securities exchange, the latest bid quotation for the shares if then traded over-the-counter on the last business day for which closing prices are available immediately preceding the day on which notices of such acquisitions are sent or, if no such closing sales prices or quotations are available, then the net asset value of those shares as determined by our board of directors in accordance with the provisions of applicable law.

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock and preferred stock is Wells Fargo Shareholder Services.

### **DESCRIPTION OF OUR COMMON STOCK**

The following description of our common stock sets forth certain general terms and provisions of our common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion or exchange of our debt securities or preferred stock or upon the exercise of warrants to purchase our common stock.



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All shares of our common stock covered by this prospectus will be duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of the charter regarding the restrictions on transfer of stock, holders of shares of our common stock are entitled to receive dividends on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us and to share ratably in the assets of our company 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 known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock.

Subject to the provisions of our charter regarding the restrictions on transfer of stock, each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, except as provided with respect to any other class or series of stock, the holders of such shares will possess the exclusive voting power. There is no cumulative voting in the election of our board of directors, which means that the holders of a plurality of the outstanding shares of our common stock can elect all of the directors then standing for election and the holders of the remaining shares will not be able to elect any directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of the charter regarding the restrictions on transfer of stock, shares of our common stock will have equal dividend, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, transfer all or substantially all of its assets, engage in a statutory share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by the board of directors and 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 of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter generally reduces the stockholder vote required for these matters to a majority of the total number of shares of all classes understanding and entitled to vote thereon. Additionally, Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation. Because operating assets may be held by a corporation's subsidiaries, as in our situation, this may mean that a subsidiary of a corporation can transfer all of its assets without a vote of the corporation's stockholders.

Our charter authorizes our board of directors to reclassify any unissued shares of our common stock into other classes or series of classes of stock and to establish the number of shares in each class or series and to set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption for each such class or series.

**DESCRIPTION OF OUR PREFERRED STOCK**

Our charter authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series. Prior to issuance of shares of each series, our board of directors is required by the MGCL and our charter to set 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 such series. Thus, our board of directors 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 of our company that might involve a premium price for holders of our common stock or otherwise be in their best interest. As of the date hereof, 187,299 shares of Series A Preferred Stock and 15,819,263 shares of Series B Preferred Stock are outstanding. Our preferred stock will, when issued, be fully paid and nonassessable and will not have, or be subject to, any preemptive or similar rights.

The prospectus supplement relating to the series of preferred stock offered by that supplement will describe the specific terms of those securities, including:

the title and stated value of that preferred stock;

the number of shares of that preferred stock offered, the liquidation preference per share and the offering price of that preferred stock;

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the dividend rate(s), period(s) and payment date(s) or method(s) of calculation thereof applicable to that preferred stock;

whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends on that preferred stock will accumulate;

the voting rights applicable to that preferred stock;

the procedures for any auction and remarketing, if any, for that preferred stock;

the provisions for a sinking fund, if any, for that preferred stock;

the provisions for redemption including any restriction thereon, if applicable, of that preferred stock;

any listing of that preferred stock on any securities exchange;

the terms and conditions, if applicable, upon which that preferred stock will be convertible into shares of our common stock, including the conversion price (or manner of calculation of the conversion price) and conversion period;

a discussion of federal income tax considerations applicable to that preferred stock;

any limitations on issuance of any series of preferred stock ranking senior to or on a parity with that series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

in addition to those limitations described above under **DESCRIPTION OF CAPITAL STOCK** Restrictions on Ownership and Transfer, any other limitations on actual and constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and

any other specific terms, preferences, rights, limitations or restrictions of that preferred stock.

**Rank Within Our Capital Structure**

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our affairs rank:

senior to all classes or series of common stock and to all equity securities ranking junior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs;

on a parity with all equity securities issued by us the terms of which specifically provide that those equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs; and

junior to all equity securities issued by us the terms of which specifically provide that those equity securities rank senior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs.

The term equity securities does not include convertible debt securities.

**Dividends**

Subject to the preferential rights of any other class or series of stock and to the provisions of the charter regarding the restrictions on transfer of stock, holders of shares of our preferred stock will be entitled to receive dividends on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us, at rates and on dates as will be set forth in the applicable prospectus supplement.

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Dividends on any series or class of our preferred stock may be cumulative or noncumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If our board of directors fails to authorize a dividend payable on a dividend payment date on any series or class of preferred stock for which dividends are noncumulative, then the holders of that series or class of preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on such series or class are declared or paid for any future period.

If any shares of preferred stock of any series or class are outstanding, no dividends may be authorized or paid or set apart for payment on the preferred stock of any other series or class ranking, as to dividends, on a parity with or junior to the preferred stock of that series or class for any period unless:

the series or class of preferred stock has a cumulative dividend, and full cumulative dividends have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for payment on the preferred stock of that series or class for all past dividend periods and the then current dividend period; or

the series or class of preferred stock does not have a cumulative dividend, and full dividends for the then current dividend period have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for the payment on the preferred stock of that series or class.

When dividends are not paid in full (or a sum sufficient for the full payment is not set apart) upon the shares of preferred stock of any series or class and the shares of any other series or class of preferred stock ranking on a parity as to dividends with the preferred stock of that series or class, then all dividends authorized on shares of preferred stock of that series or class and any other series or class of preferred stock ranking on a parity as to dividends with that preferred stock shall be authorized pro rata so that the amount of dividends authorized per share on the preferred stock of that series or class and other series or class of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on the shares of preferred stock of that series or class (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend) and that other series or class of preferred stock bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on preferred stock of that series or class that may be in arrears.

## **Redemption**

We may have the right or may be required to redeem one or more series of preferred stock, in whole or in part, in each case upon the terms, if any, and at the time and at the redemption prices set forth in the applicable prospectus supplement.

If a series of preferred stock is subject to mandatory redemption, we will specify in the applicable prospectus supplement the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid dividends, except in the case of noncumulative preferred stock. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series or class is payable only from the net proceeds of the issuance of our stock, the terms of that preferred stock may provide that, if no such stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, that preferred stock shall automatically and mandatorily be converted into shares of our applicable stock pursuant to conversion provisions specified in the applicable prospectus supplement.

## **Liquidation Preference**

Upon any voluntary or involuntary liquidation or dissolution of us or winding up of our affairs, then, before any distribution or payment will be made to the holders of common stock or any other series or class of stock ranking junior to any series or class of the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of our affairs, the holders of that series or class of preferred stock will be entitled to receive out of our assets legally available for distribution to shareholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid on the preferred stock (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend). After payment of the full amount of



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the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets.

If, upon any voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of any series or class of preferred stock and the corresponding amounts payable on all shares of other classes or series of our stock of ranking on a parity with that series or class of preferred stock in the distribution of assets upon liquidation, dissolution or winding up, then the holders of that series or class of preferred stock and all other classes or series of capital stock will share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions have been made in full to all holders of any series or class of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of stock ranking junior to that series or class of preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For these purposes, the consolidation or merger of us with or into any other entity, or the sale, lease, transfer or conveyance of all or substantially all of our property or business, will not be deemed to constitute a liquidation, dissolution or winding up of our affairs.

### **Voting Rights**

Holders of preferred stock will not have any voting rights, except as provided for in the Articles Supplementary establishing a series or class of preferred stock and as described in the applicable prospectus supplement.

### **Conversion Rights**

The terms and conditions, if any, upon which shares of any series or class of preferred stock are convertible into shares of common stock will be set forth in the applicable prospectus supplement. The terms will include:

the number of shares of common stock into which the preferred stock is convertible;

the conversion price (or manner of calculation of the conversion price);

the conversion period;

provisions as to whether conversion will be at the option of the holders of the preferred stock or us,

the events requiring an adjustment of the conversion price; and

provisions affecting conversion in the event of the redemption of the preferred stock.

### **Series A Preferred Stock**

Our board of directors has classified and designated 5,465,000 shares of Series A Preferred Stock, of which 187,299 shares are currently outstanding. The Series A Preferred Stock generally provides for the following rights, preferences and obligations.

*Dividend Rights.* Holders of the Series A Preferred Stock are entitled to receive, when, as and if declared by our board of directors out of funds legally available therefor, cumulative preferential cash dividends at the rate of \$1.60 per annum per share, and no more, payable in equal quarterly installments on each March 31, June 30, September 30 and December 31.



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*Liquidation Rights.* Upon any voluntary or involuntary liquidation, dissolution or winding up of our company, the holders of Series A Preferred Stock will be entitled to receive a liquidation preference of \$16.40 per share, plus any accumulated, accrued and unpaid dividends (whether or not declared), before any payment or distribution will be made or set aside for holders of any junior stock.

*Redemption Provisions.* We may redeem Series A Preferred Stock, in whole or from time to time in part, at a cash redemption price equal to 100% of the liquidation preference plus all accrued and unpaid dividends (whether or not earned or

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declared) to the date fixed for redemption. The Series A Preferred Stock has no stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

*Voting Rights.* Holders of Series A Preferred Stock generally have no voting rights, except in certain circumstances when our board of directors will be expanded by two seats and the holders of Series A Preferred Stock will be entitled to elect these two directors. In addition, the issuance of senior shares or certain changes to the terms of the Series A Preferred Stock that would be materially adverse to the rights of holders of Series A Preferred Stock cannot be made without the affirmative vote of holders of at least 66 2/3% of the outstanding Series A Preferred Stock and shares of any class or series of shares ranking on a parity with the Series A Preferred Stock which are entitled to similar voting rights, if any, voting as a single class.

*Conversion and Preemptive Rights.* Holders of the Series A Preferred Stock may, at their option, convert shares of Series A Preferred Stock into shares of our common stock at the rate of 1.6497 shares of our common stock for each share of Series A Preferred Stock converted. The conversion rate of the Series A Preferred Stock is subject to adjustment in certain circumstances. Holders of shares of our Series A Preferred Stock have no preemptive rights to subscribe for any securities of our company.

### **Series B Preferred Stock**

Our board of directors has classified and designated 37,000,000 shares of Series B Preferred Stock, of which 15,819,263 shares are currently outstanding. The Series B Preferred Stock generally provides for the following rights, preferences and obligations.

*Dividend Rights.* Holders of the Series B Preferred Stock are entitled to receive, when, as and if declared by our board of directors out of funds legally available therefor, cumulative preferential cash dividends at the annual rate of \$1.26 per share, and no more, payable in equal monthly installments on each monthly dividend payment date.

*Liquidation Rights.* Upon any voluntary or involuntary liquidation, dissolution or winding up of our company, the holders of Series B Preferred Stock will be entitled to receive a liquidation preference of \$11.38 per share, plus an amount equal to all accumulated, accrued and unpaid dividends (whether or not declared) to the date of liquidation, dissolution or winding up of the affairs of our company, before any payment or distribution will be made to or set apart for the holders of any junior stock.

*Redemption Provisions.* We may redeem Series B Preferred Stock, in whole or from time to time in part, at a cash redemption price equal to \$12.50 per share, plus all accrued and unpaid dividends (whether or not earned or declared) to the date fixed for redemption. The Series B Preferred Stock has no stated maturity and is not subject to any sinking fund or mandatory redemption provisions.

*Voting Rights.* Holders of Series B Preferred Stock generally have no voting rights, except in certain circumstances when our board of directors will be expanded by two seats and the holders of Series B Preferred Stock will be entitled to elect these two directors. In addition, the issuance of senior shares or certain changes to the terms of the Series B Preferred Stock that would be materially adverse to the rights of holders of Series B Preferred Stock cannot be made without the affirmative vote of holders of at least 66 2/3% of the outstanding Series B Preferred Stock and shares of any class or series of shares ranking on a parity with the Series B Preferred Stock which are entitled to similar voting rights, if any, voting as a single class.

So long as 5,900,000 or more shares of Series B Preferred Stock remain outstanding (which represents 20% of the aggregate number of shares of Series B Preferred Stock initially issued), the affirmative vote of at least a majority of the outstanding shares of such Series B Preferred Stock will be required for the sale, lease or conveyance by us of all or substantially all of our property or business, or our consolidation or merger with any other corporation unless the corporation resulting from such consolidation or merger will have after such consolidation or merger no class of shares either authorized or outstanding ranking prior to or on a parity with the Series B Preferred Stock except the same number of shares ranking prior to or on a parity with the Series B Preferred Stock and having the same rights and preferences as our authorized and outstanding shares immediately preceding such consolidation or merger, and each holder of Series B Preferred Stock immediately preceding such consolidation or merger shall receive the same number of shares, with the same rights and preferences, of the resulting corporation.

*Conversion and Preemptive Rights.* Holders of Series B Preferred Stock may, at their option, convert shares of Series B Preferred Stock into shares of our common stock at the rate of 0.6373 shares of our common stock for each share of Series B Preferred Stock converted. The conversion rates of the Series B Preferred Stock are subject to adjustment in certain circumstances. Holders of shares of our Series B Preferred Stock have no preemptive rights to subscribe for any securities of our company.



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**DESCRIPTION OF OUR DEBT SECURITIES**