

NEW YORK MORTGAGE TRUST INC
Form 10-K/A
July 09, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

- ☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2011

- ☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the Transition Period From _____ to _____

Commission File Number 001-32216
NEW YORK MORTGAGE TRUST, INC .
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

47-0934168
(I.R.S. Employer
Identification No.)

52 Vanderbilt Avenue, New York, NY 10017
(Address of principal executive office) (Zip Code)
(212) 792-0107
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value \$0.01 per share	NASDAQ Stock Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 10-K/A

Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (check one):

Large Accelerated Filer	☐	Accelerated Filer	☐	Non-Accelerated Filer	☐	Smaller Reporting Company	☒
-------------------------	-----------------------	-------------------	-----------------------	-----------------------	-----------------------	---------------------------	----------------------------------

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

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2011 was \$58,675,038.

The number of shares of the registrant’s common stock, par value \$.01 per share, outstanding on March 8, 2012 was 13,938,273.

Explanatory Note

New York Mortgage Trust, Inc. (the “Company”) is filing this Amendment No. 1 on Form 10-K/A to amend its Annual Report on Form 10-K for the year ended December 31, 2011, filed with the Securities and Exchange Commission (the “SEC”) on March 12, 2012 (the “Initial 10-K Filing”), solely for the purpose of amending and restating the Exhibit Index included in the Initial 10-K Filing to:

1. correct inadvertent references to the month of December in the descriptions of Exhibits 4.2(a), 4.2(b), 10.1 and 10.2;
2. include references to “(File No. 001-32216)”, the Company’s file number, in the descriptions of Exhibits 3.1(b), 3.1(c), 4.2(a), 4.2(b), 10.1, 10.2 and 10.3; and
3. include the following language which was inadvertently omitted from the Initial 10-K Filing: “Certain instruments defining the rights of holders of long-term debt securities of the Registrant and its subsidiaries are omitted pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant hereby undertakes to furnish to the SEC, upon request, copies of any such instruments.”

Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that any amendment to a report required to be accompanied by the certifications specified in Rule 13a-14 or 15d-14 of the Exchange Act must be accompanied by new certifications of the principal executive officer and principal financial officer. These certifications are therefore also included as Exhibits 31.1 and 31.2.

Except for the corrections described above, this Amendment No. 1 on Form 10-K/A does not modify any disclosures contained in the Initial 10-K Filing. Additionally, this does not attempt to update the disclosures in our Initial 10-K Filing or to discuss any developments subsequent to the date of the initial filing. In accordance with the rules and regulations of the Securities and Exchange Commission, the information contained in the Initial 10-K Filing and this amendment is subject to updated or supplemental information contained in reports filed by us with the Securities and Exchange Commission subsequent to the filing dates of the Initial 10-K Filing and this amendment.

NEW YORK MORTGAGE TRUST, INC.

INDEX TO EXHIBITS

Exhibits. The exhibits required by Item 601 of Regulation S-K are listed below. Management contracts or compensatory plans are filed as Exhibits 10.3, 10.7, 10.8, 10.10, 10.11 and 10.12.

Exhibit	Description
3.1	Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
3.1(b)	Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 4, 2007 (File No. 001-32216)).
3.1(c)	Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on October 4, 2007 (File No. 001-32216)).
3.1(d)	Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(d) to the Company's Current Report on Form 8-K filed on May 16, 2008).
3.1(e)	Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(e) to the Company's Current Report on Form 8-K filed on May 16, 2008).
3.1(f)	Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(f) to the Company's Current Report on Form 8-K filed on June 15, 2009).
3.2	Bylaws of New York Mortgage Trust, Inc., as amended (Incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K filed on March 4, 2011).
4.1	Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
4.2(a)	Junior Subordinated Indenture between The New York Mortgage Company, LLC and JPMorgan Chase Bank, National Association, as trustee, dated September 1, 2005. (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005 (File No. 001-32216)). Certain instruments defining the rights of holders of long-term debt securities of the Registrant and its subsidiaries are omitted pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant hereby undertakes to furnish to the SEC, upon request, copies of any such instruments.
4.2(b)	Amended and Restated Trust Agreement among The New York Mortgage Company, LLC, JPMorgan Chase Bank, National Association, Chase Bank USA, National Association and the Administrative Trustees named therein, dated September 1, 2005. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005 (File No. 001-32216)).

- 4.3(a) Articles Supplementary Establishing and Fixing the Rights and Preferences of Series A Cumulative Redeemable Convertible Preferred Stock of the Company (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 25, 2008).

- 4.3(b) Form of Series A Cumulative Redeemable Convertible Preferred Stock Certificate (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.1 Parent Guarantee Agreement between New York Mortgage Trust, Inc. and JPMorgan Chase Bank, National Association, as guarantee trustee, dated September 1, 2005. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005 (File No. 001-32216)).
- 10.2 Purchase Agreement among The New York Mortgage Company, LLC, New York Mortgage Trust, Inc., NYM Preferred Trust II and Taberna Preferred Funding II, Ltd., dated September 1, 2005. (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005 (File No. 001-32216)).
- 10.3 New York Mortgage Trust, Inc. 2005 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-3/A (File No. 333-127400) as filed with the Securities and Exchange Commission on December 9, 2005 (File No. 001-32216)).
- 10.4 Stock Purchase Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule I thereto, dated as of November 30, 2007 (Incorporated by reference to Exhibit 10.1(a) to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.5 Registration Rights Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule I to the Stock Purchase Agreement, dated as of January 18, 2008 (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.6 Advisory Agreement, by and among New York Mortgage Trust, Inc., Hypotheca Capital, LLC, New York Mortgage Funding, LLC and JMP Asset Management LLC, dated as of January 18, 2008 (Incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.7 Separation Agreement and General Release, by and between New York Mortgage Trust, Inc. and David A. Akre, dated as of February 3, 2009 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 4, 2009).
- 10.8 Amended and Restated Employment Agreement, by and between New York Mortgage Trust, Inc. and Steven R. Mumma, dated as of February 11, 2009 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2009).
- 10.9 Form of Registration Rights Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule A thereto, dated as of February 14, 2008 (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on February 19, 2008).
- 10.10 Form of Restricted Stock Award Agreement for Officers (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009.)
- 10.11

Form of Restricted Stock Award Agreement for Officers (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009.)

10.12	New York Mortgage Trust, Inc. 2010 Stock Incentive Plan (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on May 17, 2010).
10.13	Amended and Restated Advisory Agreement by and among New York Mortgage Trust, Inc., Hypotheca Capital, LLC, New York Mortgage Funding, LLC and Harvest Capital Strategies, LLC, dated as of July 26, 2010 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 28, 2010).
10.14	Amended and Restated Employment Agreement, by and between New York Mortgage Trust, Inc. and Steven R. Mumma dated as of November 22, 2011 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 23, 2011).
10.15	Investment Management Agreement, by and between New York Mortgage Trust, Inc. and The Midway Group, LP dated as of February 11, 2011 (Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 5, 2011).
10.16	Management Agreement, by and between RB Commercial Mortgage LLC and RiverBanc LLC, dated as of April 5, 2011 (Incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 5, 2011).
10.17	Notice of Termination and Letter Agreement, by and among New York Mortgage Trust, Inc., Hypotheca Capital, LLC, New York Mortgage Funding, LLC and Harvest Capital Strategies LLC, dated as of December 30, 2011 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 30, 2011).
10.18	Underwriting Agreement among New York Mortgage Trust, Inc. and the several underwriters listed therein, dated as of December 1, 2011 (Incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on December 2, 2011).
10.19	First Amendment to Investment Management Agreement by and between New York Mortgage Trust, Inc. and The Midway Group, L.P., dated March 9, 2012.*****
21.1	List of Subsidiaries of the Registrant.*****
23.1	Consent of Independent Registered Public Accounting Firm (Grant Thornton LLP).*****
31.1	Section 302 Certification of Chief Executive Officer.*
31.2	Section 302 Certification of Chief Financial Officer.*
32.1	Section 906 Certification of Chief Executive Officer and Chief Financial Officer.*****
Exhibit 101.INS XBRL	Instance Document ***
Exhibit 101.SCH	Taxonomy Extension Schema Document ***

XBRL

Exhibit Taxonomy Extension Calculation Linkbase Document ***

101.CAL

XBRL

6

Exhibit Taxonomy Extension Definition Linkbase Document ***
101.DEF
XBRL

Exhibit Taxonomy Extension Label Linkbase Document ***
101.LAB
XBRL

Exhibit Taxonomy Extension Presentation Linkbase Document ***
101.PRE
XBRL

* Filed herewith.

** Furnished herewith. Such certification shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

*** Submitted electronically herewith. Attached as Exhibit 101 to this report are the following documents formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets at December 31, 2011 and 2010; (ii) Consolidated Statements of Operations for the years ended December 31, 2011 and 2010; (iii) Consolidated Statements of Comprehensive Income for the years ended December 31, 2011 and 2010; (iv) Consolidated Statements of Equity for the years ended December 31, 2011 and 2010; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2011 and 2010; and (vi) Notes to Consolidated Financial Statements. Users of this data are advised pursuant to Rule 406T of Regulation S-T that this interactive data file is deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, and otherwise is not subject to liability under these sections.

**** Copies of these exhibits are included in the Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 12, 2012.

SIGNATURES

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

NEW YORK MORTGAGE TRUST, INC.

Date: July 9, 2012

By:

/s/ Steven R. Mumma

Name: Steven R. Mumma

Title: Chief Executive Officer and
President

(Principal Executive Officer)

Date: July 9, 2012

By:

/s/ Fredric S. Starker

Name: Fredric S. Starker

Title: Chief Financial Officer
(Principal Financial and

Accounting Officer)