

ENCORE CAPITAL GROUP INC

Form S-4/A

May 02, 2013

Table of Contents

As filed with the Securities and Exchange Commission on May 2, 2013

Registration No. 333-187581

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 2

to

Form S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ENCORE CAPITAL GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

6153
(Primary Standard Industrial
Classification Code Number)
3111 Camino Del Rio North, Suite 1300,

48-1090909
(I.R.S. Employer
Identification Number)

San Diego, California 92108

(877) 445-4581

(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

Gregory L. Call

Senior Vice President, General Counsel and Corporate Secretary

3111 Camino Del Rio North, Suite 1300,

San Diego, California 92108

(877) 445-4581

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

With copies to:

Steven B. Stokdyk, Esq.	Daryl Lansdale, Esq.	Edwin L. Herbert, Esq.	Jeffrey Symons, Esq.
Latham & Watkins LLP	Fulbright & Jaworski L.L.P.	Asset Acceptance Capital Corp.	Kirkland & Ellis LLP
355 South Grand Avenue	300 Convent Street, Suite 2100	28405 Van Dyke Avenue	601 Lexington Avenue
Los Angeles, California 90071	San Antonio, Texas 78205	Warren, Michigan 48093	New York, New York 10022
(213) 485-1234	(210) 224-5575	(586) 939-9600	(212) 446-4800

Approximate date of commencement of the proposed sale of the securities to the public: As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

Edgar Filing: ENCORE CAPITAL GROUP INC - Form S-4/A

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

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 the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this proxy statement/prospectus is not complete and may be changed. We may not sell the securities offered by this proxy statement/prospectus until the registration statement filed with the United States Securities and Exchange Commission is effective. This proxy statement/prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction where an offer or solicitation is not permitted.

SUBJECT TO COMPLETION, DATED May , 2013

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

To our Stockholders:

You are cordially invited to attend a special meeting of stockholders of Asset Acceptance Capital Corp., a Delaware Corporation (AACC), to be held on , 2013, at 9:00 a.m. (local time), at the offices of Kirkland & Ellis LLP located at 601 Lexington Avenue, New York, New York 10022.

At the special meeting, you will be asked to (i) adopt the Agreement and Plan of Merger (the merger agreement), dated as of March 6, 2013, by and among AACC, Encore Capital Group, Inc., a Delaware corporation (Encore), and Pinnacle Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Encore (Merger Sub), pursuant to which Merger Sub will be merged with and into AACC (the merger) with AACC continuing as the surviving corporation and a wholly owned subsidiary of Encore, and (ii) cast an advisory (non-binding) vote with respect to compensation payable to AACC named executive officers that is related to the merger (the golden parachute compensation).

If the merger is completed, you will be entitled to receive, at your election and subject to the terms of the merger agreement, either \$6.50 in cash or 0.2162 validly issued, fully paid and nonassessable shares of Encore common stock, in each case without interest and less any applicable withholding taxes, for each share of Company common stock you own at the time of the merger. Please note that no more than 25% of the total shares of AACC common stock outstanding immediately prior to the merger may be exchanged for shares of Encore common stock (for which Encore expects that it may issue up to 1,689,372 shares of its common stock) and any shares of AACC common stock elected to be exchanged for Encore common stock in excess of such 25% limitation will be subject to proration in accordance with the terms of the merger agreement.

Upon completion of the merger, Encore will own all of AACC s capital stock. As a result, AACC will no longer have its stock listed on the NASDAQ Global Select Stock Market (NASDAQ) and will no longer be required to file periodic and other reports with the United States Securities and Exchange Commission (SEC) with respect to AACC common stock.

Any stockholder who does not vote in favor of the adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares of AACC common stock in lieu of the per share merger consideration if the merger is completed, but only if such stockholder submits a written demand for appraisal of its shares before the taking of the vote on the merger agreement at the special meeting and they comply with all requirements of Section 262 of the General Corporation Law of the State of Delaware (the DGCL) for exercising appraisal rights, which are summarized in this proxy statement/prospectus. Such shares of AACC common stock will not be converted into the right to receive the per share merger consideration in connection with the merger.

After careful consideration, AACC s Board of Directors, by unanimous vote of those directors present, has determined that the merger agreement is advisable and in the best interests of AACC and its stockholders and has approved and authorized the merger agreement and the transactions contemplated thereby, including the merger. Accordingly, the Board of Directors unanimously recommends that you vote FOR the adoption of the merger agreement.

The accompanying proxy statement/prospectus provides you with detailed information about the special meeting, the background of and reasons for the proposed merger, the terms of the merger agreement and other important information. Please give this material your careful attention, including Risk Factors beginning on page 23, for a discussion of the risks relating to the proposed merger.

Your vote is very important regardless of the number of shares you own. The merger cannot be completed unless holders of a majority of the outstanding shares of AACC common stock vote FOR the adoption of the merger agreement. We would like you to attend the special meeting. However, whether or not you plan to attend the special meeting, it is important that your shares be represented. Accordingly, please complete, sign and submit the enclosed proxy or submit your proxy by following the instructions on the enclosed proxy card as soon as possible.

AACC s Board of Directors also unanimously recommends that you vote FOR the advisory (non-binding) approval of the golden parachute compensation. In considering the recommendation of AACC s Board of Directors, you should be aware that some of AACC s directors and executive officers have interests in the merger that are different from, or in addition to, interests of AACC s stockholders generally (for a discussion of such interests, see AACC Proposal

Edgar Filing: ENCORE CAPITAL GROUP INC - Form S-4/A

No. 1 The Merger AACC s Directors and Officers Have Financial Interests in the Merger that begins on page 70).

If you hold shares in street name or otherwise through a broker, bank or other nominee, you should follow the procedures provided by them, or they may not be unable to vote your shares. If you do not vote or instruct your broker or nominee how to vote, it will have the same effect as a vote AGAINST the adoption of the merger agreement and will have no effect on the advisory non-binding vote on the golden parachute compensation. If you complete, sign and submit your proxy card without indicating how you wish to vote, your proxy will be counted as a vote FOR the adoption of the merger agreement, FOR the advisory non-binding vote on the golden parachute compensation and FOR the approval of any adjournment of the special meeting. Remember, failing to vote has the same effect as a vote AGAINST the adoption of the merger agreement.

Thank you for your continued support and we look forward to seeing you on , 2013.

Sincerely,

Rion B. Needs

President and Chief Executive Officer

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger or the Encore common stock to be issued to the holders of AACC common stock if the merger is consummated, passed upon the merits or fairness of the merger agreement or the transactions contemplated thereby, including the proposed merger, or passed upon the adequacy or accuracy of the information contained in this document or the accompanying proxy statement/prospectus. Any representation to the contrary is a criminal offense.

The date of this notice of special meeting and proxy statement/prospectus and form of proxy is , 2013, and it is first being mailed or otherwise distributed and made available to AACC stockholders on or about , 2013.

Table of Contents

Asset Acceptance Capital Corp.

28405 Van Dyke Avenue

Warren, MI 48093

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON _____, 2013

To the Stockholders of Asset Acceptance Capital Corp.:

Notice is hereby given that a special meeting of stockholders of Asset Acceptance Capital Corp., a Delaware corporation ("AACC"), will be held on _____, 2013, at 9:00 a.m. (local time), at the offices of Kirkland & Ellis LLP located at 601 Lexington Avenue, New York, New York 10022:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger (the "merger agreement"), dated as of March 6, 2013, by and among AACC, Encore Capital Group, Inc., a Delaware corporation ("Encore"), and Pinnacle Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Encore ("Merger Sub"), pursuant to which Merger Sub will be merged with and into AACC (the "merger") with AACC continuing as the surviving corporation and a wholly owned subsidiary of Encore;
2. To consider and cast an advisory (non-binding) vote with respect to certain agreements or understandings with, and items of compensation payable to, AACC named executive officers that are related to the merger (the "golden parachute" compensation);
3. To consider and vote upon a proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement; and
4. To consider and vote upon any other matters that properly come before the special meeting or any adjournment or postponement thereof.

Only holders of record of AACC common stock at the close of business on _____, 2013, the record date of the special meeting (the "record date"), are entitled to notice of, and to vote at, the special meeting or any adjournments or postponements of the special meeting.

The merger agreement, the merger, and the "golden parachute" compensation arrangements are more fully described in the accompanying proxy statement/prospectus, which AACC urges you to read carefully and in its entirety. A copy of the merger agreement is attached as Annex A to the accompanying proxy statement/prospectus, which AACC also urges you to read carefully and in its entirety.

The merger cannot be completed without the affirmative vote of the holders of a majority of the shares of AACC common stock outstanding as of the record date to adopt the merger agreement. The approval of the "golden parachute" compensation is advisory (non-binding) and is not a condition to completion of the merger. Whether or not you plan to attend the special meeting, please complete, sign and return the enclosed proxy card or submit your proxy by Internet, by telephone, or by mail following the instructions on the proxy card.

AACC's Board of Directors has, by a unanimous vote of those directors present, approved and authorized the merger agreement and recommends that you vote FOR adoption of the merger agreement. AACC's Board of Directors recommends that you vote FOR approval, on any advisory (non-binding) basis, of the "golden parachute" compensation payable to AACC's named executive officers in connection with the merger.

Table of Contents

Under the DGCL, AACC's stockholders may exercise appraisal rights in connection with the merger. Record holders of AACC common stock who do not vote in favor of the proposal to adopt the merger agreement and who comply with all of the other necessary procedural requirements under the DGCL will have the right to dissent from the merger and to seek appraisal of the fair value of their shares of AACC common stock in lieu of receiving the per share merger consideration, as determined by the Delaware Court of Chancery. For a description of appraisal rights and the procedures to be followed to assert them, stockholders should review the provisions of Section 262 of the DGCL, a copy of which is included as Annex C to the accompanying proxy statement/prospectus.

The affirmative vote of a majority of the shares of AACC common stock present (in person or by proxy) and entitled to vote on the proposal is required for the approval of the advisory (non-binding) proposal on golden parachute compensation.

AACC urges you to read the proxy statement/prospectus and merger agreement carefully and in their entirety.

If you have questions about the merger agreement or the merger, including the procedures for voting your shares, you should contact AACC's proxy solicitor, D.F. King & Co., Inc., toll-free (for stockholders) at (888) 644-5854 or (for banks and brokers) at (212) 269-5550.

BY ORDER OF THE BOARD OF DIRECTORS

Edwin L. Herbert, Esq.,
Vice President, General Counsel & Secretary

, 2013

Please do not return your AACC common stock certificates with the enclosed proxy card. Rather, as more fully described in this proxy statement/prospectus, you should surrender your AACC common stock certificates only in accordance with the instructions set forth in the election form delivered to you (or, if you hold your shares in street name, to your broker, bank or other nominee) by the exchange agent on or about the date this proxy statement/prospectus was first mailed to AACC stockholders. See *The Merger Agreement Election Procedures* on page 83 for additional information related to the exchange of your AACC common stock certificates for the proposed merger consideration.

Table of Contents

REFERENCES TO ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about Encore and AACC from documents that are not included in or delivered with this proxy statement/prospectus. You can obtain documents incorporated by reference in this proxy statement/prospectus, other than certain exhibits to those documents, at www.sec.gov or by requesting them in writing or by telephone from the appropriate company at the following addresses:

Encore Capital Group, Inc.

3111 Camino Del Rio North, Suite 1300

San Diego, California 92108

Phone: (877) 445-4581

Email: adam.sragovicz@encorecapital.com

Asset Acceptance Capital Corp.

28405 Van Dyke Avenue

Warren, Michigan 48093

Phone: (586) 939-9600

Email: marraf@assetacceptance.com

You will not be charged for any of these documents that you request. AACC stockholders requesting documents should do so by , 2013 in order to receive them before the special meeting. See Where You Can Find More Information on page 123.

Table of Contents**TABLE OF CONTENTS**

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE SPECIAL MEETING</u>	iii
<u>SUMMARY</u>	1
<u>SUMMARY HISTORICAL AND PRO FORMA FINANCIAL DATA</u>	13
<u>RECENT DEVELOPMENTS</u>	22
<u>RISK FACTORS</u>	23
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	29
<u>THE AACC SPECIAL MEETING</u>	32
<u>AACC PROPOSAL NO. 1 THE MERGER</u>	36
<u>Background of the Merger</u>	36
<u>AACC's Reasons for the Merger: Recommendation of the AACC Board of Directors</u>	46
<u>Encore's Reasons for the Merger</u>	50
<u>Opinion of AACC's Financial Advisor</u>	52
<u>Certain Unaudited Financial Forecasts Prepared by the Management of AACC</u>	60
<u>Public Trading Markets</u>	63
<u>Certain Effects of the Merger</u>	64
<u>Effects on AACC if the Merger is Not Completed</u>	64
<u>Regulatory Approvals</u>	65
<u>Merger Financing</u>	65
<u>Appraisal Rights</u>	66
<u>AACC's Directors and Officers Have Financial Interests in the Merger</u>	70
<u>Treatment of Equity-Based Awards</u>	70
<u>Retention and Potential Severance Payments to Executive Officers</u>	71
<u>Summary of Potential Payments to AACC's Executive Officers and Directors</u>	72
<u>Indemnification of Directors and Officers; Directors' and Officers' Insurance</u>	75
<u>Security Ownership of Certain Beneficial Owners and Management</u>	75
<u>Material U.S. Federal Income Tax Consequences of the Merger</u>	77
<u>Litigation Relating to the Merger</u>	77
<u>Effective Time of the Merger</u>	78
<u>Payment of Merger Consideration and Surrender of AACC Stock</u>	78
<u>Expenses and Fees</u>	79
<u>THE MERGER AGREEMENT</u>	80
<u>The Merger</u>	80
<u>Consideration to be Received in the Merger</u>	81
<u>Treatment of AACC Stock Options and Other Equity-Based Awards</u>	82
<u>Adjustments</u>	83
<u>Withholding</u>	83
<u>Election Procedures</u>	83
<u>Closing and Effective Time of the Merger</u>	84
<u>Conversion of AACC Common Stock; Exchange of Certificate</u>	84
<u>Letter of Transmittal</u>	85
<u>Lost, Stolen or Destroyed Certificates</u>	86
<u>Conditions to Complete the Merger</u>	86
<u>Reasonable Best Efforts to Obtain AACC Stockholder Approval</u>	86
<u>Solicitation of Alternative Takeover Proposals; Change of Recommendation; Matching Rights</u>	87
<u>Transaction Litigation</u>	89
<u>Other Reasonable Best Efforts Obligations; Regulatory Approvals</u>	90
<u>Termination of the Merger Agreement</u>	91
<u>Termination Fee</u>	92
<u>Remedies</u>	92
<u>Conduct of Business Pending the Merger</u>	93

Table of Contents

<u>Additional Covenants</u>	95
<u>Indemnification of Directors and Officers; Directors and Officers Insurance</u>	95
<u>Employee Matters</u>	95
<u>Representations and Warranties</u>	96
<u>Definition of Material Adverse Effect</u>	98
<u>Expenses and Fees</u>	98
<u>Amendment, Waiver and Extension of the Merger Agreement</u>	99
<u>Governing Law and Venue; Waiver of Jury Trial</u>	99
<u>Voting Agreement</u>	99
<u>ACCOUNTING TREATMENT</u>	99
<u>UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS</u>	100
<u>MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER</u>	106
<u>AACC PROPOSAL NO. 2 ADVISORY VOTE REGARDING GOLDEN PARACHUTE COMPENSATION</u>	112
<u>AACC PROPOSAL NO. 3 ADJOURNMENT OF THE SPECIAL MEETING</u>	113
<u>INFORMATION ABOUT THE COMPANIES</u>	114
<u>COMPARISON OF STOCKHOLDERS RIGHTS</u>	115
<u>AUTHORIZED AND OUTSTANDING CAPITAL STOCK</u>	115
<u>BUSINESS COMBINATIONS</u>	115
<u>AMENDMENT TO THE CERTIFICATE OF INCORPORATION</u>	116
<u>AMENDMENT TO THE BYLAWS</u>	116
<u>SPECIAL MEETINGS OF STOCKHOLDERS</u>	117
<u>STOCKHOLDER PROPOSALS AND NOMINATIONS</u>	117
<u>STOCKHOLDER ACTION BY WRITTEN CONSENT</u>	118
<u>BOARD OF DIRECTORS</u>	118
<u>Number of Directors</u>	118
<u>Classification</u>	118
<u>Removal</u>	118
<u>Vacancies</u>	119
<u>Special Meetings of the Board</u>	119
<u>Director Liability and Indemnification</u>	119
<u>COMPARATIVE MARKET PRICES AND DIVIDENDS</u>	121
<u>LEGAL MATTERS</u>	122
<u>EXPERTS</u>	122
<u>AACC 2013 ANNUAL MEETING STOCKHOLDER PROPOSALS</u>	122
<u>DELIVERY OF DOCUMENTS TO STOCKHOLDERS SHARING AN ADDRESS</u>	122
<u>COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES</u>	122
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	123
<u>ANNEX A: AGREEMENT AND PLAN OF MERGER</u>	A-1
<u>ANNEX B: OPINION OF WILLIAM BLAIR & COMPANY, L.L.C.</u>	B-1
<u>ANNEX C: SECTION 262 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE</u>	C-1
<u>PART II INFORMATION NOT REQUIRED IN PROSPECTUS</u>	II-1
<u>SIGNATURES</u>	II-5
<u>EXHIBIT INDEX</u>	II-7

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE SPECIAL MEETING

The questions and answers below, which are for your convenience only, briefly address some commonly asked questions about the merger, highlight only selected procedural information from this proxy statement/prospectus and are qualified in their entirety by the more detailed information contained elsewhere in this proxy statement/prospectus. These questions and answers may not address all of the questions, nor do they contain all of the information, that may be important to you as an AACC stockholder. You should read carefully the entire document (including the attached annexes) and the additional documents incorporated by reference into this document.

Q: Why am I receiving these materials?

A: You are receiving this proxy statement/prospectus and proxy card because you own shares of AACC common stock. AACC's Board of Directors is providing these proxy materials to give you information to determine how to vote in connection with the special meeting of AACC's stockholders. Additionally, this proxy statement/prospectus is being provided to assist you in determining whether to elect to receive Encore common stock as your merger consideration (as defined below).

Q: When and where is the special meeting?

A: The special meeting will be held on _____, 2013, at 9:00 a.m. (local time), at the offices of Kirkland & Ellis LLP located at 601 Lexington Avenue, New York, New York 10022.

Q: Upon what am I being asked to vote at the special meeting?

A: You are being asked to consider and vote upon the following proposals:

1. To consider and vote on a proposal to adopt the merger agreement, by and among AACC, Encore and Merger Sub, pursuant to which Merger Sub will be merged with and into AACC, with AACC continuing as the surviving corporation and a wholly owned subsidiary of Encore;
2. To consider and cast an advisory (non-binding) vote with respect to certain agreements or understandings with, and items of compensation payable to, AACC named executive officers that are related to the merger (the golden parachute compensation);
3. To consider and vote upon a proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement; and
4. To consider and vote upon any other matters that properly come before the special meeting or any adjournment or postponement thereof.

Q: Why is the merger being proposed?

A: AACC's purpose in proposing the merger is to enable stockholders to receive, upon completion of the merger, the applicable merger consideration (as defined below) for each share of AACC common stock outstanding immediately prior to the merger. After careful consideration, AACC's Board of Directors has, by unanimous vote of all directors present, (i) determined that the merger is fair to, and in the best interests of, AACC and its stockholders, (ii) approved and declared advisable the merger agreement, the merger and the other transactions contemplated by the merger agreement, (iii) resolved to recommend adoption of the merger agreement to the holders of AACC common stock and (iv) directed that the merger agreement be submitted to the holders of AACC common stock for their adoption at a stockholders' meeting duly called and held for such purpose. For a more detailed discussion of the conclusions, determinations and reasons of AACC's Board of Directors for recommending that AACC undertake the merger on the terms of the merger agreement, see AACC Proposal No. 1 The Merger AACC's Reasons for the Merger; Recommendation of the AACC Board of Directors beginning on page 46.

Table of Contents

Q: What will happen in the merger?

A: If the merger is completed, Merger Sub will merge with and into AACC and AACC will continue as the surviving corporation and become a wholly owned subsidiary of Encore. As a result of the merger, AACC's common stock will no longer be publicly traded and you will no longer have any interest in AACC's future earnings or growth, unless you own Encore common stock (whether through the receipt of Encore common stock as merger consideration (as defined below) or otherwise). In addition, AACC common stock will be delisted from NASDAQ and deregistered under the Securities Exchange Act of 1934, as amended (the Exchange Act), and AACC will no longer be required file periodic reports with the SEC with respect to AACC common stock, in each case in accordance with applicable law, rules and regulations.

Q: What will I receive in the merger?

A: If the merger is completed, you will be entitled, in accordance with the terms of the merger agreement, to elect to receive cash, shares of Encore common stock or a combination thereof in exchange for the shares of AACC common stock you own at the time of the merger. Specifically, each share of AACC common stock with respect to which you validly elect to receive cash (a cash election) will be converted into the right to receive an amount in cash equal to \$6.50 without interest and less any applicable withholding taxes (the cash consideration). Subject to proration as described below, each share of AACC common stock with respect to which you elect to receive Encore common stock (a stock election) will be converted into the right to receive 0.2162 validly issued, fully paid and nonassessable shares of Encore Common Stock less any applicable withholding taxes (together with any cash in lieu of fractional shares of Encore common stock to be paid pursuant to the terms of the merger agreement, the stock consideration and together with the cash consideration, the merger consideration), which reflects the quotient determined by dividing the per share merger consideration of \$6.50 by the closing stock price per share of Encore common stock on March 5, 2013 (the last trading day prior to the announcement of the merger agreement).

Please note that no more than 25% of the shares of AACC common stock outstanding as of the time of the merger may be exchanged for stock consideration (the maximum stock election). If you elect to receive stock consideration and the holders of AACC common stock elect in the aggregate to receive stock consideration in excess of the maximum stock election, then the number of shares of AACC common stock owned by you that will be exchanged for stock consideration will be subject to a pro rata reduction based on the total number of shares of AACC common stock for which you made a stock election compared to the total number of shares of AACC common stock for which all AACC stockholders made a stock election, such that that the aggregate number of shares of AACC common stock actually exchanged for stock consideration equals the maximum stock election. Each share of AACC common stock with respect to which neither a cash election nor a stock election has been validly made will automatically be converted into the right to receive only the cash consideration. See The Merger Agreement Consideration to be Received in the Merger beginning on page 81, and The Merger Agreement Election Procedures on page 83, for additional information related to the exchange of your AACC common stock for the proposed merger consideration.

The foregoing does not apply to shares owned by Encore, Merger Sub or any of their subsidiaries or any AACC stockholders who are entitled to and who properly exercise, and do not properly withdraw, their appraisal rights under the DGCL.

Q: How does the per share merger consideration compare to the market price of AACC common stock prior to announcement of the merger?

A: The \$6.50 per share merger consideration (which is payable in cash or shares of Encore common stock as described above) represents a premium of approximately 24.76% relative to AACC's closing stock price of \$5.21 on March 1, 2013, the last full trading day prior to the announcement by AACC (made before the opening of NASDAQ on March 4, 2013) that AACC was rescheduling its 2012 fourth quarter and year-end earnings release and conference call, approximately 12.85% relative to AACC's closing stock price of \$5.76 on March 5, 2013,

Table of Contents

the last full trading day before the announcement of the proposed transaction, and approximately 23.57% premium over AACC's volume-weighted average closing stock price of \$5.26 over the last 30 full trading days prior to announcement of the proposed merger with Encore on the morning of March 6, 2013.

Q: What is the recommendation of AACC's Board of Directors?

A: Based on the factors described in AACC Proposal No. 1 The Merger AACC's Reasons for the Merger; Recommendation of the AACC Board of Directors beginning on page 46, AACC's Board of Directors, after careful consideration, has, by a unanimous vote of all directors present, approved and authorized the merger agreement, the merger and the other transactions contemplated by the merger agreement, and determined that the merger agreement is advisable and in the best interests of the stockholders of AACC. **AACC's Board of Directors has, by a unanimous vote of all directors present, approved and authorized the merger agreement and unanimously recommends that you vote FOR the adoption of the merger agreement.** The recommendation of AACC's Board of Directors is based, in part, upon the unanimous recommendation of a strategic alternatives review committee of AACC's Board of Directors consisting of four disinterested directors. AACC's Board of Directors established the review committee for the purpose of determining which, if any, strategic alternatives AACC should pursue and, in the event that a strategic alternative was to be pursued, to, among other things, determine whether such strategic alternative is fair to and in the best interests of AACC and its stockholders and make an appropriate recommendation to AACC's Board of Directors. AACC's Board of Directors also recommends that you vote FOR the approval of the golden parachute compensation. See AACC Proposal No. 1 The Merger AACC's Reasons for the Merger; Recommendation of the AACC Board of Directors beginning on page 46 and AACC Proposal No. 2 Advisory Vote Regarding Golden Parachute Compensation on page 112.

Q: Who will own AACC after the merger?

A: Immediately following the merger, AACC will be a wholly owned subsidiary of Encore and the current stockholders of AACC will cease to own any shares of AACC capital stock.

Q: What are the consequences of the merger to present members of management and AACC's Board of Directors?

A: Shares of AACC common stock owned by members of management and AACC's Board of Directors will be treated the same as shares held by other AACC stockholders. Options, restricted stock units and deferred stock units related to AACC common stock that are held by members of management and AACC's Board of Directors will be treated the same as outstanding options, restricted stock units and deferred stock units related to AACC common stock which are held by other AACC employees. Each such option, restricted stock unit and deferred stock unit will be cancelled in exchange for the right to receive a lump sum cash payment equal to the per share merger consideration, without interest and less any applicable exercise price per share of AACC common stock underlying such option, restricted stock unit or deferred stock unit and less any applicable withholding taxes. See The Merger Agreement Treatment of AACC Stock Options and Other Equity-Based Awards beginning on page 82. For information regarding other payments and benefits to AACC's named executive officers that are tied to or based on the merger, see AACC Proposal No. 2 Advisory Vote Regarding Golden Parachute Compensation on page 112.

Q: Is the merger subject to the satisfaction of any conditions?

A: Yes. The completion of the merger is subject to the satisfaction or waiver of the conditions described in The Merger Agreement Conditions to Complete the Merger beginning on page 86. These conditions include:

the adoption of the merger agreement by the holders of a majority of the of the outstanding AACC common stock;

the expiration or termination of the regulatory waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act);

Table of Contents

the absence of any order or law, judgment or ruling of any governmental entity that restrains, enjoins, prohibits or otherwise prevents the consummation of the merger;

the approval for listing on NASDAQ (subject to official notice of issuance) of the shares of Encore common stock to be issued as stock consideration;

the declaration by the SEC of the effectiveness of Encore's registration statement on Form S-4 and the absence of any stop order suspending such effectiveness (or proceeding seeking such suspension) issued by the SEC;

the absence of a material adverse effect on each of AACC and Encore;

the accuracy of the representations and warranties of AACC, Encore and Merger Sub (subject in certain cases to certain materiality, knowledge and other qualifications); and

AACC's, Encore's and Merger Sub's performance in all material respects of their respective obligations under the merger agreement.

Q: Who can attend and vote at the special meeting?

A: All holders of AACC common stock at the close of business on the record date will be entitled to vote (in person or by proxy) on the merger agreement at the special meeting or any adjournments or postponements of the special meeting. As of the record date, there were _____ shares of AACC Common Stock issued and outstanding.

For directions to the special meeting, please call AACC's Investor Relations line at (586) 939-9600 option 5. We look forward to having you at the meeting.

Q: What vote is required to approve the merger agreement?

A: The merger agreement will only be adopted upon the affirmative vote of a majority of the shares of AACC common stock outstanding on the record date. Because the required vote is based on the number of shares outstanding rather than on the number of votes cast at the special meeting, failure to vote your shares (including as a result of broker non-votes) and abstentions will have the same effect as voting AGAINST the adoption of the merger agreement. AACC urges you to attend the special meeting to vote your shares in person. If you are not able to attend the special meeting in person, AACC urges you to either complete, execute and return the enclosed proxy card in accordance with the instructions set forth in The Merger Agreement Election Procedures on page 83 or submit your proxy or voting instructions by Internet, by telephone or by mail to assure the representation of your shares at the special meeting. A broker non-vote occurs when a broker does not have discretion to vote on the matter and has not received instructions from the beneficial owner (i.e., you) as to how such beneficial owner's shares are to be voted on the matter.

Q: Have any stockholders already agreed to approve the merger?

A: In connection with the merger agreement, AAC Quad-C Investors LLC (the supporting stockholder), which owned as of March 6, 2013, approximately 35.6% of the outstanding shares of AACC, entered into a voting agreement with Encore, dated as of March 6, 2013 (the voting agreement), pursuant to which the supporting stockholder has agreed to vote all of its shares of AACC common stock in favor of the adoption of the merger agreement. See The Merger Agreement Voting Agreement on page 99.

Other than the supporting stockholder, to AACC's knowledge, none of AACC's stockholders have entered into an agreement to vote their shares of AACC common stock in favor or against the adoption of the merger agreement.

Q: Why am I being asked to cast an advisory (non-binding) vote with respect to golden parachute compensation payable to AACC's named executive officers in connection with the merger?

Edgar Filing: ENCORE CAPITAL GROUP INC - Form S-4/A

A: The applicable rules of the SEC require AACC to seek an advisory (non-binding) vote with respect to certain payments that will be made to AACC's named executive officers in connection with the merger.

Table of Contents

Q: What is the golden parachute compensation for purposes of this advisory vote?

A: The golden parachute compensation is certain compensation that is tied to or based on the merger and payable to AACC's named executive officers. See AACC Proposal No. 1 The Merger Summary of Potential Payments to AACC's Executive Officers and Directors beginning on page 72 and AACC Proposal No. 2 Advisory Vote Regarding Golden Parachute Compensation on page 112.

Q: What vote is required to approve the golden parachute compensation payable to AACC's named executive officers in connection with the merger?

A: The affirmative vote of a majority of the shares of AACC common stock present (in person or by proxy) and entitled to vote on the proposal is required for approval of the advisory (non-binding) proposal on golden parachute compensation.

Q: What will happen if stockholders do not approve the golden parachute compensation at the special meeting?

A: Approval of the golden parachute compensation is not a condition to completion of the merger. The vote with respect to the golden parachute compensation is an advisory vote and will not be binding on AACC or Encore. If the merger agreement is adopted by AACC stockholders and the merger is completed, the golden parachute compensation may be paid to AACC's named executive officers even if stockholders fail to approve the golden parachute compensation so long as the otherwise applicable conditions to payment are satisfied. For a more detailed description of the golden parachute compensation and the terms and conditions applicable for payment of such compensation to be triggered, please see AACC Proposal No. 1 The Merger Summary of Potential Payments to AACC's Executive Officers and Directors beginning on page 72.

Q: What is a quorum for the special meeting i.e., how many shares must be present to hold the special meeting?

A: In order for AACC to convene the special meeting, a majority of the shares of AACC common stock outstanding as of _____, 2013 (or _____ shares) must be present in person or by proxy (which shares comprise a majority in voting power of the AACC capital stock issued and outstanding and entitled to vote at the special meeting). This majority is referred to as a quorum. If a quorum is not present at the special meeting, the special meeting may be adjourned or postponed from time to time until a quorum is obtained. If you submit a proxy, your shares will be counted to determine whether AACC has a quorum even if you abstain or fail to provide voting instructions on any of the proposals listed on the proxy card. If your shares are held in the name of a nominee that submits a proxy card with regard to your shares and you do not tell the nominee how to vote your shares, these shares will be counted for purposes of determining the presence or absence of a quorum for the transaction of business.

Q: How many votes do I have?

A: You have one vote for each share of AACC common stock that you own as of the record date.

Q: How are votes counted?

A: Votes will be counted by the inspector of election appointed for the special meeting, who will separately count FOR and AGAINST votes, abstentions and broker non-votes and separately count votes in respect of each proposal. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not receive instructions from the beneficial owner with respect to the merger proposal, or the proposal for golden parachute compensation, or the adjournment proposal, counted separately.

Because Delaware law and the amended and restated certificate of incorporation of AACC require the affirmative vote of holders of a majority of the outstanding shares of AACC common stock to approve the adoption of the merger agreement, the failure to vote, broker non-votes and abstentions will have the same effect as voting AGAINST the merger proposal. If you complete, sign and submit your proxy card without indicating how you wish to vote, your proxy will#160;

The business address of the KSOP is:
610 Bay Boulevard, Chula Vista, California 91910

The business address of the ESOP Trustee is:
National Trust Management Services, Inc.
c/o First PacTrust Bancorp, Inc.
610 Bay Boulevard, Chula Vista, California 91910

Edgar Filing: ENCORE CAPITAL GROUP INC - Form S-4/A

The business address of the 401(k) Trustees is:
610 Bay Boulevard, Chula Vista, California 91910

ITEM 2(c)

CITIZENSHIP:

The ESOP Trustee is incorporated under the laws of the Commonwealth of Virginia. James P. Sheehy and Lisa J. Moss are citizens of the United States of America.

ITEM 2(d)

TITLE OF CLASS OF SECURITIES

Common stock, par value \$.01 per share (the "Common Stock")

ITEM 2(e)

CUSIP NUMBER: 33589V 10 1

ITEM 3 IF THIS STATEMENT IS FILED PURSUANT TO SECTION 240.13d-1(b) OR 240.13d-2(b) or (c), CHECK WHETHER THE PERSON FILING IS:

- | | | |
|-----|-------------------------------------|---|
| (a) | <input type="checkbox"/> | Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o); |
| (b) | <input type="checkbox"/> | Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c); |
| (c) | <input type="checkbox"/> | Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c); |
| (d) | <input type="checkbox"/> | Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8); |
| (e) | <input type="checkbox"/> | An investment adviser in accordance with Section 240.13d-1(b)(1)(ii)(E); |
| (f) | <input checked="" type="checkbox"/> | An employee benefit plan or endowment fund in accordance with Section 240.13d-1(b)(1)(ii)(F); |
| (g) | <input type="checkbox"/> | A parent holding company or control person in accordance with Section 240.13d-1(b)(1)(ii)(G); |
| (h) | <input type="checkbox"/> | A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813); |
| (i) | <input type="checkbox"/> | A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3); and |
| (j) | <input type="checkbox"/> | Group, in accordance with Section 240.13d-1(b)(1)(ii)(J). |

Page 6 of 9

ITEM 4 OWNERSHIP:

The KSOP holds an aggregate of 455,197 shares of Common Stock (10.71% of the outstanding shares). The KSOP has sole voting power with respect to shares held by it which have not been allocated to participant accounts, shared voting power with respect to shares held by it which have been allocated to participant accounts, sole dispositive power with respect to all shares (allocated and unallocated) held by the ESOP Portion and shared dispositive power with respect to all shares held by the 401(k) Portion.

The ESOP Trustee may be deemed to beneficially own the 374,540 shares held by the ESOP Portion. However, the ESOP Trustee expressly disclaims beneficial ownership of all of such shares. Other than the shares held by the ESOP Portion, the Trustee does not beneficially own any shares of Common Stock.

The 401(k) Trustees may be deemed to beneficially own the 80,657 shares held by the 401(k) Portion. However, the 401(k) Trustees expressly disclaim beneficial ownership of such shares. Below is the beneficial ownership of shares of Common Stock held by each individual 401(k) Trustee as of December 31, 2008. The numbers below include 39,200 and 5,800 shares underlying exercisable stock options and options exercisable within 60 days after December 31, 2008 held by James P. Sheehy and Lisa J. Moss, respectively.

401(k) Trustee	Beneficial Ownership
James P. Sheehy	84,776
Lisa J. Moss	9,466

Pursuant to the KSOP, participants in the KSOP are entitled to instruct the Trustee as to the voting of the shares allocated to their KSOP accounts. On each issue with respect to which shareholders are entitled to vote, the trustees are required to vote the shares held by the KSOP which have not been allocated to participant accounts in the manner directed under the KSOP.

ITEM 5 OWNERSHIP OF FIVE PERCENT OR LESS OF A CLASS:

Not applicable.

ITEM 6. OWNERSHIP OF MORE THAN FIVE PERCENT ON BEHALF OF ANOTHER PERSON:

Not Applicable.

ITEM 7. IDENTIFICATION AND CLASSIFICATION OF THE SUBSIDIARY WHICH ACQUIRED THE SECURITY BEING REPORTED ON BY THE PARENT HOLDING COMPANY:

Not Applicable.

ITEM 8. IDENTIFICATION AND CLASSIFICATION OF MEMBERS OF THE GROUP:

Not Applicable.

ITEM 9. NOTICE OF DISSOLUTION OF GROUP:

Not Applicable.

ITEM 10. CERTIFICATIONS

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

SIGNATURE After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

FIRST PACTRUST BANCORP, INC. 401(k)
EMPLOYEE STOCK OWNERSHIP PLAN

Date: February 17, 2009

By: National Trust Management Services, Inc., as Trustee

By: /s/ Lawrence J. Eisenberg

Name: Lawrence J. Eisenberg

Title: Vice President

NATIONAL TRUST MANAGEMENT SERVICES, INC.,
AS TRUSTEE OF THE EMPLOYEE STOCK OWNERSHIP
PORTION OF THE PLAN

Date: February 17, 2009

By: /s/ Lawrence J. Eisenberg

Name: Lawrence J. Eisenberg

Title: Vice President

TRUSTEES OF THE 401(k) PORTION OF THE PLAN

Date: February 17, 2009

By: /s/ James P. Sheehy

Name: James P. Sheehy

Title: Trustee

Date: February 17, 2009

By: /s/ Lisa J. Moss

Name: Lisa J. Moss

Title: Trustee

February 17, 2009

First PacTrust Bancorp, Inc.
Employee Stock Ownership Plan
610 Bay Boulevard
Chula Vista, California 91910

Dear Sir/Madam:

This letter hereby confirms the agreement and understanding between you and the undersigned that the Schedule 13G being filed with the Securities and Exchange Commission on or about this date is being filed on behalf of each of us.

Sincerely,

NATIONAL TRUST MANAGEMENT SERVICES, INC. AS TRUSTEE

By: /s/ Lawrence J. Eisenberg
Name: Lawrence J. Eisenberg
Title: Vice President

FIRST PACTRUST BANCORP, INC.
EMPLOYEE STOCK OWNERSHIP PLAN

By: NATIONAL TRUST MANAGEMENT SERVICES, INC.
AS TRUSTEE OF THE ESOP PORTION OF THE PLAN

By: /s/ Lawrence J. Eisenberg
Name: Lawrence J. Eisenberg
Title: Vice President

By: TRUSTEES OF THE 401(k) PORTION OF THE PLAN

By: /s/ James P. Sheehy
Name: James P. Sheehy
Title: Trustee

By: /s/ Lisa J. Moss
Name: Lisa J. Moss
Title: Trustee