

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

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported) **August 26, 2022**

Impac Mortgage Holdings, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Maryland

(State or Other Jurisdiction of Incorporation)

1-14100

(Commission File Number)

33-0675505

(IRS Employer Identification No.)

19500 Jamboree Road, Irvine, California
(Address of Principal Executive Offices)

92612

(Zip Code)

(949) 475-3600

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Stock, \$0.01 par value	IMH	NYSE American
Preferred Stock Purchase Rights	IMH	NYSE American

Item 1.01 Entry into a Material Definitive Agreement

On August 26, 2022, the Board of Directors of Impac Mortgage Holdings, Inc. (the “**Company**”) approved, and on August 26, 2022, the Company entered into, a First Amendment to Tax Benefits Preservation Rights Agreement (the “**First Amendment**”), which amends the Tax Benefits Preservation Rights Agreement, dated as of October 23, 2019 (the “**Rights Agreement**”), between the Company and American Stock Transfer & Trust Company, LLC, as rights agent. American Stock Transfer & Trust Company, LLC also serves as to the Company’s transfer agent.

Under the First Amendment, (i) each Right (as defined in the Rights Agreement), if exercisable, will initially represent the right to purchase from the Company one one-thousandth of a fully paid, non-assessable share of the Series A-1 Junior Participating Preferred Stock, par value \$0.01 per share, for a purchase price of \$2.30 (the “**Purchase Price**”) (which Purchase Price was modified in light of the decreased trading price of the Company’s common stock since the adoption of the Rights Plan on October 23, 2019), and (ii) the Final Expiration Date (as defined in the Rights Agreement) will be extended from October 22, 2022 to October 22, 2025. The First Amendment also provides that the Rights will no longer be exercisable if the Company’s stockholders do not approve the First Amendment at the Company’s 2023 Annual Meeting of Stockholders (or any adjournment or postponement thereof).

The First Amendment was not adopted as a result of, or in response to, any effort to acquire control of the Company. The First Amendment has been adopted in order to preserve for the Company’s stockholders the long-term value of the Company’s net operating loss carry-forwards for United States federal income tax purposes and other tax benefits.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is filed as Exhibit 4.1 hereto and is incorporated herein by reference. The Rights Agreement and a description of its material terms were filed with the Securities and Exchange Commission in Current Reports on Form 8-K on October 23, 2019.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On August 26, 2022, the Company received a notification (the “Deficiency Letter”) from the NYSE American LLC (the “NYSE American”) stating that the Company was not in compliance with a certain NYSE American continued listing standard relating to stockholders’ equity. Specifically, the Deficiency Letter stated that the Company is not in compliance with Sections 1003(a)(ii) and 1003(a)(iii) of the NYSE American Company Guide, which requires an issuer to have, respectively, stockholder’s equity of \$4 million or more if it has reported losses from continuing operations and/or net losses in three of its four most recent fiscal years and stockholders’ equity of \$6.0 million or more if it has reported losses from continuing operations and/or net losses in its five most recent fiscal years. The Deficiency Letter noted that Company had stockholders’ equity of \$3.5 million as of June 30, 2022, and has reported net losses from continuing operations in its five most recent fiscal years ended December 31, 2021.

The Company is required to submit a plan to the NYSE American by September 26, 2022 advising of actions it has taken or will take to regain compliance with the continued listing standards by February 26, 2024. The Company intends to submit a plan by the deadline. If the Company fails to submit a plan or if the Company’s plan is not accepted, or if the Company does not make progress consistent with the plan, or if the Company fails to regain compliance by the deadline, the NYSE American may commence delisting procedures. If the plan is accepted, the Company will also be subject to periodic NYSE American reviews, including quarterly monitoring for compliance with the plan.

The Company’s common stock, par value \$0.01 per share (“Common Stock”), will continue to be listed on the NYSE American while it attempts to regain compliance with the listing standard noted, subject to the Company’s compliance with other continued listing requirements. The Common Stock will continue to trade under the symbol “IMH,” but will have an added designation of “.BC” to indicate that the Company is not in compliance with the NYSE American’s listing standards. The NYSE American notification does not affect the Company’s business operations or its SEC reporting requirements and does not conflict with or cause an event of default under any of the Company’s material agreements.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

Item 9.01 Exhibits

Exhibit Number

- 4.1 [First Amendment to Tax Benefits Preservation Rights Agreement, dated as of August 26, 2022, by and between Impac Mortgage Holdings, Inc. and American Stock Transfer & Trust Company, LLC, as rights agent.](#)
- 99.1 [Press Release dated August 29, 2022 announcing the receipt of notice of noncompliance from the NYSE American.](#)
- 104 Cover Page Interactive Data File (embedded within the XBRL document).
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SIGNATURES

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

IMPAC MORTGAGE HOLDINGS, INC.

Date: August 29, 2022

By: /s/ Joe Joffrion

Name: Joe Joffrion

Title: Senior Vice President and General Counsel

**FIRST AMENDMENT
TO
TAX BENEFITS PRESERVATION RIGHTS AGREEMENT**

This FIRST AMENDMENT TO TAX BENEFITS PRESERVATION RIGHTS AGREEMENT is dated as of August 26, 2022 (the “First Amendment”), by and between Impac Mortgage Holdings, Inc., a Maryland corporation (the “Company”), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company (the “Rights Agent” which term shall include any successor Rights Agent hereunder). Capitalized terms contained herein and not otherwise defined shall have the meanings ascribed to them in the Rights Agreement.

RECITALS

WHEREAS, the Company and the Rights Agent entered into a Tax Benefits Preservation Rights Agreement dated as of October 23, 2019 (as it may be amended from time to time as provided herein, the “Rights Agreement”);

WHEREAS, pursuant to Section 28 of the Rights Agreement, prior to the occurrence of a Distribution Date (as defined in the Rights Agreement), the Company may in its sole discretion and the Rights Agent shall, if the Board of Directors so directs, supplement or amend any provision of the Rights Agreement as the Board may deem necessary or advisable without the approval of any holders of certificates representing shares of Common Stock of the Company;

WHEREAS, Section 28 of the Rights Agreement also provides that any supplement or amendment that does not amend Sections 18, 19, 20, 21 or 28 or any other section of the Rights Agreement in a manner that is adverse to the Rights Agent will become effective immediately upon execution by the Company, whether or not also executed by the Rights Agent;

WHEREAS, as of the date hereof, no Distribution Date has occurred;

WHEREAS, the Board deems it advisable and in the best interests of the Company and its stockholders to amend the terms of the Rights Agreement as set forth herein; and

WHEREAS, the Board has authorized and approved this First Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth in the Rights Agreement and this First Amendment, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Amendments to Section 1.** The definition of “Purchase Price” set forth in Section 1 of the Rights Agreement is hereby deleted in its entirety and replaced with the following:

“Purchase Price” means, as of any date, the price at which a holder may purchase securities issuable upon exercise of one whole Right. Until adjustment thereof in accordance with the terms hereof, the Purchase Price shall equal \$2.30.”

2. **Amendments of Section 7.** Section 7 of the Rights Agreement is hereby amended as follows:

(a) Clause (a)(i) shall be removed and replaced with the following:

“(i) the Close of Business on October 22, 2025 (the “Final Expiration Date”),”

(b) Clause (a)(iv) shall be removed and replaced with the following:

“(iv) the final adjournment of the Company’s 2023 Annual Meeting of Stockholders if the stockholders fail to approve the amendment to this Agreement dated as of August 26, 2022 at such meeting with an affirmative vote of a majority of the votes cast by holders of shares of Common Stock at the 2023 annual meeting of stockholders (or any adjournment or postponement thereof),”

(c) The fourth sentence of clause (a) shall be removed and replaced with the following:

“Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes, prior to the Close of Business on October 22, 2025, that the Expiration Date has not occurred.”

(d) Clause (b) shall be removed and replaced with the following:

“(b) *Price.* The Purchase Price for each one one-thousandth of a share of Preferred Stock issuable pursuant to the exercise of a Right is initially \$2.30 and is subject to adjustment from time to time as provided in Section 11 or Section 13, and payable in accordance with Section 7(c).”

3. **Amendments to Exhibit B.** Exhibit B to the Agreement is hereby amended as follows:

(a) The reference to “October 22, 2022” in the legend on page B-1 shall be removed and replaced with “October 22, 2025.”

(b) The first sentence on page B-1 shall be removed and replaced with the following:

“This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Tax Benefits Preservation Rights Agreement dated as of October 23, 2019, as amended (the “Rights Agreement”) between Impac Mortgage Holdings, Inc., a Maryland corporation (the “Company”), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company, as Rights Agent (the “Rights Agent”), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to the close of business on **October 22, 2025** at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth of a fully paid, non-assessable share of the Series A-1 Junior Participating Preferred Stock (the “Preferred Stock”) of the Company, at a purchase price of \$2.30 per one one-thousandth of a share (the “Purchase Price”), upon presentation and surrender of this Rights Certificate with the Form of Election to Purchase and the related Certificate duly executed.”

4. **Amendments to Exhibit C.** Exhibit C to the Agreement is hereby amended as follows:

- (a) The second sentence on page C-1 shall be removed and replaced with the following:

“Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A-1 Participating Preferred Stock, par value \$0.01 per share (the “**Preferred Stock**”), of the Company at an exercise price of \$2.30 per one on-thousandth of a Preferred Share, subject to adjustment (the “**Purchase Price**”).”

- (b) The first sentence on page C-3 under the section entitled “Preferred Shares Purchasable Upon Exercise of Right” of Exhibit C shall be removed and replaced with the following:

“After the Distribution Date, each Right will entitle the holder to purchase, for \$2.30 (the “**Purchase Price**”), one one-thousandth of a Preferred Share having economic and other terms similar to that of one Share of Common Stock.”

- (c) The first bullet point on page C-5 under the section entitled “Expiration Date of the Rights” of Exhibit C shall be removed and replaced with the following:

“● the close of business on October 22, 2025;”

- (d) The third bullet point on page C-5 under the section entitled “Expiration Date of the Rights” of Exhibit C shall be removed and replaced with the following:

“● the final adjournment of the Company’s 2023 Annual Meeting of Stockholders, if the stockholders fail to approve the amendment, dated as of August 26, 2022, with a majority of the votes cast by holders of shares of common stock at such meeting (or any adjournment or postponement thereof);”

5. **Effectiveness.** This First Amendment shall be deemed effective as of the date first written above, as if executed on such date. Except as amended hereby, the Rights Agreement shall remain in full force and effect and shall be otherwise unaffected hereby.

6. **Miscellaneous.** This First Amendment shall be deemed to be a contract made under the laws of the State of Maryland and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state. This First Amendment may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this First Amendment executed and/or transmitted electronically shall have the same authority, effect and enforceability as an original signature. If any provision, covenant or restriction of this First Amendment is held by a court of competent jurisdiction or other authority to be invalid, illegal or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this First Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed as an instrument under seal and attested, all as of the day and year first above written.

ATTEST:

By: /s/ Joseph Joffrion
Name: Joseph Joffrion
Title: General Counsel

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ George Mangiaracina
Name: George Mangiaracina
Title: Chief Executive Officer

CERTIFICATION AND INSTRUCTION TO RIGHTS AGENT: The officer of the Company whose duly authorized signature appears above certifies that this First Amendment is in compliance with the terms of Section 28 of the Rights Agreement and, on behalf of the Company, instructs the Rights Agent to enter into this First Amendment.

[Signature Page to First Amendment to Rights Agreement]

ATTEST:

By: /s/ Joseph Dooley
Name: Joseph Dooley
Title SVP

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, as
Rights Agent**

By: /s/ Barbara J. Robbins
Name: Barbara J. Robbins
Title SVP

[Signature Page to First Amendment to Rights Agreement]



**Impac Mortgage Holdings, Inc. Announces Receipt of
Noncompliance Notice from NYSE American**

Irvine, CA, August 29, 2022 -- Impac Mortgage Holdings, Inc. (NYSE American: IMH) (the "Company" or "we") announced today that on August 26, 2022 it received notice from NYSE American LLC ("NYSE American") that it is not in compliance with the continued listing standard set forth in Sections 1003(a)(ii) and 1003(a)(iii) of the NYSE American Company Guide (the "Company Guide"). These sections apply, respectively, if a listed company has stockholders' equity of less than \$4 million and has reported losses from continuing operations and/or net losses in three of its four most recent fiscal years and has stockholders' equity of less than \$6 million and has reported losses from continuing operations and/or net losses in its five most recent fiscal years. The Company reported stockholders' equity of approximately \$3.5 million as of June 30, 2022, the end of its second fiscal quarter of 2022, and has had losses from continuing operations and/or net losses in each of its five most recent fiscal years including the fiscal year ended December 31, 2021. As a result, the Company has become subject to the procedures and requirements of Section 1009 of the Company Guide and must submit a plan to NYSE American by September 26, 2022 addressing how the Company intends to regain compliance with Sections 1003(a)(ii) and 1003(a)(iii) by February 26, 2024.

The Company intends to prepare and timely deliver a plan of compliance to NYSE American. If the Company does not submit a plan, or if the plan the Company submits is not accepted by NYSE American, the Company will be subject to delisting proceedings as specified in the Company Guide. In addition, if the plan is accepted by NYSE American, but the Company is not in compliance with the continued listing standards by February 26, 2024, or if the Company does not make progress consistent with the plan, the Company will be subject to delisting proceedings. The Company will have the right to appeal any delisting determination made by NYSE American staff. If the plan is accepted, the Company will also be subject to periodic NYSE American reviews, including quarterly monitoring for compliance with the plan.

The Common Stock will continue to trade under the symbol "IMH," but will have an added designation of ".BC" to indicate that the Company is not in compliance with the NYSE American's listing standards. Receipt of the notice does not affect the Company's business, operations or reporting requirements with the Securities and Exchange Commission.

Forward-Looking Statements

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements, some of which are based on various assumptions and events that are beyond our control, may be identified by reference to a future period or periods or by the use of forward-looking terminology, such as "may," "capable," "will," "intends," "believes," "expect," "likely," "potentially," "appear," "should," "could," "seem to," "anticipate," "expectations," "plan," "ensure," "desire," or similar terms or variations on those terms or the negative of those terms. The forward-looking statements are based on current management expectations. Actual results may differ materially as a result of several factors, including, but not limited to the following: acceptance of a plan for regaining compliance with the NYSE American's listed company standards; impact on the U.S. economy and financial markets due to the outbreak and continued effect of the COVID-19 pandemic; our ability to successfully consummate the contemplated exchange offers for our outstanding preferred stock and receive the requisite consents for the proposed amendments to our charter documents to facilitate the redemption from holders of our outstanding preferred stock who do not participate in the exchange offers; any adverse impact or disruption to the Company's operations; changes in general economic and financial conditions (including federal monetary policy, interest rate changes, and inflation); increase in interest rates, inflation, and margin compression; ability to successfully sell aggregated loans to third-party investors; successful development, marketing, sale and financing of new and existing financial products, including NonQM products; recruit and hire talent to rebuild our TPO NonQM origination team, and increase NonQM originations; volatility in the mortgage industry; performance of third-party sub-servicers; our ability to manage personnel expenses in relation to mortgage production levels; our ability to successfully use warehousing capacity and satisfy financial covenants; our ability to maintain compliance with the continued listing requirements of the NYSE American for our common stock; increased competition in the mortgage lending industry by larger or more efficient companies; issues and system risks related to our technology; ability to successfully create cost and product efficiencies through new technology including cyber risk and data security risk; more than expected increases in default rates or loss severities and mortgage related losses; ability to obtain additional financing through lending and repurchase facilities, debt or equity funding, strategic relationships or otherwise; the terms of any financing, whether debt or equity, that we do obtain and our expected use of proceeds from any financing; increase in loan repurchase requests and ability to adequately settle repurchase obligations; failure to create brand awareness; the outcome of any claims we are subject to, including any settlements of litigation or regulatory actions pending against us or other legal contingencies; and compliance with applicable local, state and federal laws and regulations.

For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, see our latest Annual Report on Form 10-K and Quarterly Reports on Form 10-Q we file with the Securities and Exchange Commission and in particular the discussion of "Risk Factors" therein. This document speaks only as of its date and we do not undertake, and expressly disclaim any obligation, to release publicly the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements except as required by law.

About the Company

Impac Mortgage Holdings, Inc. (IMH or Impac) provides innovative mortgage lending and real estate solutions that address the challenges of today's economic environment. Impac's operations include mortgage lending, servicing, portfolio loss mitigation, real estate services, and the management of the securitized long-term mortgage portfolio, which includes the residual interests in securitizations.

For additional information, questions or comments, please call Justin Moisio, Chief Administrative Officer at (949) 475-3988 or email Justin.Moisio@ImpacMail.com. Website: <http://ir.impaccompanies.com> or www.impaccompanies.com.