

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

Current report filing

Filing Date: **2006-08-03** | Period of Report: **2006-07-27**  
SEC Accession No. **0001193125-06-159691**

([HTML Version](#) on [secdatabase.com](#))

### FILER

#### **AMERICAN CAPITAL STRATEGIES LTD**

CIK: **817473** | IRS No.: **521451377**

Type: **8-K** | Act: **34** | File No.: **814-00149** | Film No.: **06999682**

#### Mailing Address

*2 BETHESDA METRO  
CENTER  
14TH FL  
BETHESDA MD 20814*

#### Business Address

*2 BETHESDA METRO  
CENTER  
14TH FL  
BETHESDA MD 20814  
3019516122*

---

# U.S. 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): July 27, 2006

---



## American Capital Strategies, Ltd.

(Exact name of registrant as specified in its charter)

---

**DELAWARE**  
(State or other jurisdiction  
of incorporation)

**814-00149**  
(Commission File Number)

**52-1451377**  
(I.R.S. Employer  
Identification No.)

**2 Bethesda Metro Center, 14th Floor Bethesda, MD 20814**

(Address of principal executive offices, zip code)

**Registrant's telephone number, including area code: (301) 951-6122**

**N/A**

(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:

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

---

**Item 1.01. Entry into a Material Definitive Agreement.**

On July 27, 2006, the Board of Directors (the “Board”) of American Capital Strategies, Ltd. (the “Company”), on the recommendation of the Compensation and Corporate Governance Committee of the Board (the “Committee”), approved the American Capital Strategies, Ltd. Disinterested Director Retention Plan (the “Plan”). The Company established the Plan for the purposes of attracting and retaining non-employee directors of outstanding competence. All directors of the Company who are not “interested” (as defined by the Investment Company Act of 1940) and have completed at least one year of service on the Board are eligible to participate in the Plan.

The Plan is a nonqualified deferred compensation plan that will provide a lump sum payment equal to the number of full and partial years of service as a director multiplied by the annual director retention fee in place at the time of termination of service. Such payment will be made to a separate bookkeeping account maintained on behalf of the participant. The payment will be made in cash shortly following termination of service on the Board. No payment will be made if there is a unanimous vote by the remaining by the remaining directors. The participants will not have access or control of the payment until separation from the Board. Each of the Company’ s current disinterested directors will vest in their respective accounts upon the earlier of (i) the vesting schedule specified in the Plan and (ii) such director’ s becoming fully vested in his or her account immediately upon the director’ s death, disability or upon the occurrence of a change of control. Any new director of the Company will be fully vested in his or her account immediately upon becoming an eligible participant in the Plan.

This summary is qualified in its entirety by reference to the Disinterested Director Retention Plan, filed herewith as Exhibit 10.1.

**Item 9.01. Financial Statements and Exhibits.****Exhibit**

<b>Number</b>	<b>Exhibit</b>
10.1	American Capital Strategies, Ltd. Disinterested Director Retention Plan

---

**SIGNATURE**

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

**AMERICAN CAPITAL STRATEGIES, LTD.**

Dated: August 2, 2006

By:

/s/ Samuel A. Flax

Samuel A. Flax

Executive Vice President,

General Counsel and Secretary

**AMERICAN CAPITAL STRATEGIES, LTD.**  
**DISINTERESTED DIRECTOR RETENTION PLAN**

1. Definitions. In this Plan, except where the context otherwise indicates, the following definitions shall apply:

1.1. "1940 Act" means the Investment Company Act of 1940, as amended.

1.2. "Account" means a separate bookkeeping account maintained on behalf of each Participant. The value of a Participant's Account as of any date shall equal the product of (a) the Annual Board Fee in effect for such Participant as of such date, and (b) the sum of (i) a whole number equal to the number of full Years of Service accrued by such Participant as of such date, and (ii) one (1) if such date is not the Commencement Date or an anniversary thereof. No interest or other earnings shall be credited to Accounts under the Plan.

1.3. "Affiliate" means any corporation, partnership, business trust, limited liability company or other form of business organization at least a majority of the total combined voting power of all classes of stock or other equity interests of which is owned by the Company, either directly or through one or more other Affiliates.

1.4. "Annual Board Fee" means for a Participant the annual board retainer fee as in effect on such Participant's Payment Event Date, and shall not include fees paid for meeting attendance or any additional retainers such as those paid to chairs of Board committees or to the lead director.

1.5. "Board" means the Board of Directors of the Company.

1.6. "Change of Control" means a change in ownership or effective control (within the meaning of Section 409A of the Code) of the Company.

1.7. "Code" means the Internal Revenue Code of 1986, as amended.

1.8. "Committee" means the committee appointed by the Board to administer this Plan. Unless otherwise determined by the Board, the Compensation and Corporate Governance Committee of the Board shall be the Committee.

- 
- 1.9. "Commencement Date" means the date on which an individual becomes an Eligible Individual.
  - 1.10. "Company" means American Capital Strategies, Ltd., a Delaware corporation, and any successor thereto.
  - 1.11. "Director" means a member of the Board.
  - 1.12. "Disabled" means "disabled" within the meaning of Section 409A of the Code.
  - 1.13. "Effective Date" means July 27, 2006.
  - 1.14. "Eligible Individual" means any Director of the Company who is not "interested" as defined in the 1940 Act.
  - 1.15. "Participant" means an Eligible Individual who has satisfied the requirements of Section 4 hereof.
  - 1.16. "Payment Event Date" means for a Participant the earliest to occur of (a) the date of such Participant's Separation from Service, (b) the date of such Participant becoming Disabled, (c) the date of such Participant's death, or (d) the date of a Change of Control.
  - 1.17. "Plan" means this American Capital Strategies, Ltd. Disinterested Director Retention Plan, as amended from time to time.
  - 1.18. "Separation from Service" means a "separation from service" within the meaning of Section 409A of the Code.
  - 1.19. "Year of Service" means for a Participant each one-year period commencing on a Participant's Commencement Date or anniversary thereof during which such Participant continues to be an Eligible Individual.

2. Purpose. The Plan is intended to assist the Company in attracting and retaining Eligible Individuals of outstanding ability.

3. Administration. The Committee shall administer the Plan. Subject to the provisions of the Plan, the Committee shall have plenary authority and discretion to construe and interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan and to make all other determinations deemed necessary or advisable for the administration of the Plan. The determinations of the Committee on the matters referred to in this Section 3 shall be binding and final.

4. Eligibility.

4.1. Each person who is an Eligible Individual as of the Effective Date shall be a Participant as of the Effective Date.

4.2. Each person who becomes an Eligible Individual subsequent to the Effective Date shall become a Participant on the one-year anniversary of such Eligible Individual' s Commencement Date if such Eligible Individual does not die, become Disabled, experience a Separation from Service, or otherwise cease to be an Eligible Individual prior to such one-year anniversary.

5. Vesting.

5.1. Each person who is a Participant as of the Effective Date shall become vested in his or her Account as follows:

<u>Date</u>	<u>Percentage of Account Vested</u>
August 1, 2006	20 %
February 1, 2007	40 %
August 1, 2007	60 %
February 1, 2008	80 %
August 1, 2008	100 %

Notwithstanding the foregoing, each such Participant shall become fully vested in his or her Account immediately upon the Participant' s death or becoming Disabled, or upon the occurrence of a Change of Control.

5.2. Each other Participant shall be fully vested in his or her Account immediately upon becoming a Participant.

5.3. Notwithstanding any other provision of this Plan, the entirety of a Participant' s Account shall be immediately forfeited upon such Participant' s Separation from Service upon unanimous vote of the other members of the Board of Directors. In such case, such Participant shall cease to be an Eligible Individual, and no amount shall be or ever become payable under this Plan to any such Participant.

6. Payment of Accounts. Except as provided in Section 5.3, the Company shall pay to each Participant whose Account is vested as of such Participant' s Payment Event Date (or, in the event of the Participant' s death, his or her estate or designated beneficiary) an amount equal to the value of his or her Account in a lump sum in cash within one month of such Participant' s Payment Event Date.

---

7. Termination or Amendment. The Board may amend or terminate this Plan in any respect at any time; provided, however, that no amendment or termination of this Plan shall be made by the Board without approval of each affected Participant if such amendment or termination would adversely affect such Participant' s rights or obligations under this Plan.

8. Withholding. The Company' s obligation to pay to any Participant any amount hereunder shall be subject to satisfaction of any applicable federal, state and local tax withholding requirements.

9. Indemnification of Committee. In addition to such other rights of indemnification as they may have as members of the Board or the Committee, members of the Committee (and such person(s) to whom the Committee delegates its powers or responsibilities) shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with this Plan or any Bonus Award granted hereunder, and against all amounts reasonably paid by them in settlement thereof or paid by them in satisfaction of a judgment in any such action, suit or proceeding, if such members acted in good faith and in a manner which they believed to be in, and not opposed to, the best interests of the Company.

10. General Provisions.

10.1. The establishment of this Plan shall not confer upon any Participant any legal or equitable right against the Company, any Affiliate or the Committee, except as expressly provided in this Plan.

10.2. Participation in this Plan shall not give an Eligible Individual any right to be retained in the service of the Company or any Affiliate as a Director or otherwise.

10.3. The interests of any Participant under this Plan are not subject to the claims of the Participant' s creditors and may not, in any way, be assigned, alienated or encumbered.

10.4. This Plan shall be governed, construed and administered in accordance with the laws of the State of Delaware.

10.5. The Company may, in its discretion, establish a trust to fund the payment of Accounts. Notwithstanding the establishment of any trust, (a) all credits and adjustments to a Participant' s Account shall be

---

bookkeeping entries only and shall not represent a special reserve or otherwise constitute a funding of the Company' s unsecured promise to pay any amounts hereunder, and (b) to the extent that a Participant or any other person acquires a right to receive payments from the Company under this Plan, such right shall be no greater than the right of any unsecured general creditor of the Company, and such person has only the unsecured promise of the Company that such payments shall be made. The Plan is intended to be an unfunded plan for the benefit of non-employee directors, exempt from the Employee Retirement Income Security Act of 1974, as amended.

10.6. This Plan is intended to comply with Section 409A of the Code, and the Committee shall administer and interpret this Plan in a manner that is consistent therewith.