

**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): June 03, 2022

DYNEX CAPITAL, INC.

(Exact name of registrant as specified in its charter)

Virginia
(State or other jurisdiction of incorporation)
4991 Lake Brook Drive, Suite 100
Glen Allen, Virginia
(Address of principal executive offices)

1-9819
(Commission File Number)

52-1549373
(IRS Employer Identification No.)

23060-9245
(Zip Code)

(804) 217-5800
(Registrant's telephone number, including area code)

Not Applicable
(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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	DX	New York Stock Exchange
6.900% Series C Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRC	New York Stock Exchange

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

Item 1.01 Entry into a Material Definitive Agreement.

On June 3, 2022, Dynex Capital, Inc. (the “Company”), entered into amendment no. 3 (“Amendment No. 3”) to the distribution agreement, dated June 29, 2018, as amended on May 31, 2019 and August 3, 2021 (the “Agreement” and as amended by Amendment No. 3, the “Amended Agreement”) by and among the Company, J.P. Morgan Securities LLC, JMP Securities LLC, JonesTrading Institutional Services LLC and BTIG, LLC.

Amendment No. 3 increases the number of shares of the Company’s common stock available for sale under the Agreement by 15,000,000 shares.

The foregoing summary does not purport to be a complete description and is qualified in its entirety by reference to the full text of Amendment No. 3, which is attached as Exhibit 10.1 hereto.

In connection with the filing of Amendment No. 3, the Company is filing as Exhibit 5.1 hereto an opinion of its counsel, Mayer Brown LLP, with respect to the legality of the shares.

Item 9.01 Financial Statements and Exhibits.**(d) Exhibits**

Exhibit No.	Description of Exhibit
5.1	Opinion of Mayer Brown LLP with respect to the legality of common stock.
10.1	Amendment No. 3 to the Distribution Agreement, dated June 3, 2022, to the Distribution Agreement by and among Dynex Capital, Inc., J.P. Morgan Securities LLC, JMP Securities LLC, JonesTrading Institutional Services LLC and BTIG, LLC.
23.1	Consent of Mayer Brown LLP (included in Exhibit 5.1).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

DYNEX CAPITAL, INC.

Date: June 3, 2022

By: /s/ Stephen J. Benedetti

Stephen J. Benedetti

Executive Vice President, Chief Financial Officer
and Chief Operating Officer



Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020-1001

Main Tel (212) 506-2500
Main Fax (212) 262-1910
www.mayerbrown.com

June 3, 2022
Dynex Capital, Inc.
4991 Lake Brook Drive, Suite 100
Glen Allen, Virginia 23060

Re: Dynex Capital, Inc. – Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Dynex Capital, Inc., a Virginia corporation (the “Company”), in connection with the issuance and sale by the Company from time to time of up to 23,117,622 shares of the Company’s common stock, par value \$0.01 per share (the “Shares”), pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-257318) (the “Registration Statement”), filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), the prospectus, dated August 3, 2021 (the “Base Prospectus”) and prospectus supplement dated August 3, 2021, as supplemented by the supplement to the prospectus supplement, dated June 3, 2022 (the “Prospectus Supplement”), filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act. The Base Prospectus, and Prospectus Supplement are collectively referred to as the “Prospectus.” The Shares are to be sold by the Company in the manner described in the Registration Statement and the Prospectus.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of: (i) the Amended and Restated Articles of Incorporation of the Company, as amended through the date hereof; (ii) the Amended and Restated Bylaws of the Company, as amended through the date hereof; (iii) certain resolutions of the board of directors of the Company, relating to the issuance and sale of the Shares; (iv) the Registration Statement; (v) the Prospectus; and (vi) an executed copy of the Distribution Agreement, dated as of June 29, 2018, as amended as of May 31, 2019, August 3, 2021 and June 3, 2022, by and among the Company and J.P. Morgan Securities LLC, JMP Securities LLC, JonesTrading Institutional Services LLC and BTIG, LLC. In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of certain other corporate records, documents, instruments and certificates of public officials and of the Company, and we have made such inquiries of officers of the Company and public officials and considered such questions of law as we have deemed necessary for purposes of rendering the opinions set forth herein.

In connection with this opinion, we have assumed the genuineness of all signatures and the authenticity of all items submitted to us as originals and the conformity with originals of all items submitted to us as copies. In making our examination of documents executed by parties other than the Company, we have assumed that each other party has the power and authority to

execute and deliver, and to perform and observe the provisions of, such documents and has duly authorized, executed and delivered such documents, and that such documents constitute the legal, valid and binding obligations of each such party. We also have assumed the integrity and completeness of the minute books of the Company presented to us for examination. With respect to certain factual matters, we have relied upon certificates of officers of the Company.

Based upon, subject to and limited by the foregoing, we are of the opinion that the Shares have been duly and validly authorized and, when and if issued and delivered against payment therefor in the manner contemplated by the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

We do not express any opinion herein concerning any law other than the laws of the Commonwealth of Virginia and the federal laws of the United States of America, as in effect on the date hereof.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Company's Current Report on Form 8-K to be filed with the Commission on or about June 3, 2022, which will be incorporated by reference in the Registration Statement, and to the reference to us in the Prospectus. In giving such consent, we do not hereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the Commission thereunder.

Very truly yours,

/s/ MAYER BROWN LLP

DYNEX CAPITAL, INC.
AMENDMENT NO. 3 TO
DISTRIBUTION AGREEMENT

June 3, 2022

J.P. Morgan Securities LLC
383 Madison Avenue
New York, NY 10179

JMP Securities LLC
600 Montgomery Street
Suite 1100
San Francisco, CA 94111

JonesTrading Institutional Services LLC
757 Third Avenue 23rd Floor
New York, NY 10017

BTIG, LLC
65 East 55th Street
New York, NY 10022

Ladies and Gentlemen:

Reference is made to the Distribution Agreement, dated June 29, 2018, as amended on May 31, 2019 and August 3, 2021 (the “**Distribution Agreement**”), by and among Dynex Capital, Inc., a Virginia corporation (the “**Company**”), J.P. Morgan Securities LLC, JMP Securities LLC, JonesTrading Institutional Services LLC and BTIG, LLC (collectively, the “**Agents**”), pursuant to which the Company agreed, in its sole discretion, to issue and sell, from time to time, through the Agents, as agent and/or principal, up to 25,000,000 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 3 to Distribution Agreement (this “**Amendment**”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Distribution Agreement. The Company and the Agents hereby agree as follows:

- A. **Amendments to Distribution Agreement**. The Distribution Agreement is amended as follows:
 - 1. The definition of “Maximum Number” in the first sentence of the Distribution Agreement is hereby amended to read as follows: “23,117,622 shares”.
- B. **Prospectus Supplement**. The Company shall file a Prospectus Supplement pursuant to Rule 424(b) of the Act reflecting the terms of this Amendment within two business days of the date hereof.
- C. **No Other Amendments; References to Distribution Agreement**. Except as set forth in **Part A** above, all the terms and provisions of the Distribution Agreement shall continue in full force and effect. All references to the Distribution Agreement in the Distribution Agreement or in any other document executed or delivered in connection therewith shall, from the date hereof, be deemed a reference to the Distribution Agreement as amended by this Amendment.

- D. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by facsimile or by electronic delivery of a portable document format (PDF) file (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com).
- E. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding among the Company and each of the Agents, please so indicate in the space provided below for that purpose, whereupon this Amendment No. 3 to Distribution Agreement and your acceptance shall constitute a binding agreement among the Company and each of the Agents.

Very truly yours,

DYNEX CAPITAL, INC.

By: /s/ Stephen J. Benedetti
Name: Stephen J. Benedetti
Title: Executive Vice President, Chief Financial
Office and Chief Operating Officer

Accepted and agreed to as of the date first above written:

J.P. MORGAN SECURITIES LLC

By: /s/ Stephanie Little

Name: Stephanie Little

Title: Executive Director

JMP SECURITIES LLC

By: /s/ Tosh Chandra

Name: Tosh Chandra

Title: Managing Director

JONESTRADING INSTITUTIONAL SERVICES LLC

By: /s/ Burke Cook

Name: Burke Cook

Title: General Counsel

BTIG, LLC

By: /s/ Dan Blood

Name: Dan Blood

Title: Managing Director