

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): May 31, 2019

DYNEX CAPITAL, INC.
(Exact name of registrant as specified in its charter)

Virginia
(State or other jurisdiction
of incorporation)

1-9819
(Commission
File Number)

52-1549373
(IRS Employer
Identification No.)

4991 Lake Brook Drive, Suite 100
Glen Allen, Virginia
(Address of principal executive offices)

23060-9245
(Zip Code)

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

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, \$0.01 par value	DX	New York Stock Exchange
8.50% Series A Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRA	New York Stock Exchange
7.625% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRB	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 May 31, 2019, Dynex Capital, Inc., a Virginia corporation (the “Company”), entered into an amendment, dated May 31, 2019 (the “Amendment”), to the Distribution Agreement, dated June 29, 2018 (the “Agreement”), among the Company, J.P. Morgan Securities LLC and JMP Securities LLC. The Amendment modifies the parties to the Agreement to include JonesTrading Institutional Services LLC as an additional sales agent. The Amendment also increases the shares of the Company’s common stock by 15,000,000 shares (the “Shares”) allocated to at the market sales.

The foregoing description of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment, which is attached as Exhibit 10.1 hereto and is incorporated by reference herein. In connection with the Amendment, the Company is filing as Exhibit 5.1 to this Current Report on Form 8-K an opinion of Mayer Brown LLP with respect to the legality of the Shares to be sold pursuant to the Agreement.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
5.1	Opinion of Mayer Brown LLP with respect to the legality of the shares.
10.1	Amendment No.1 to Distribution Agreement, dated May 31, 2019, among J.P. Morgan Securities LLC, JMP Securities LLC, JonesTrading Institutional Services LLC and Dynex Capital, Inc.
23.1	Consent of Mayer Brown LLP (included in exhibit 5.1).

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: May 31, 2019

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, NY 10020-1001
United States of America

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May 31, 2019

Dynex Capital, Inc.
4991 Lake Brook Drive, Suite 100
Glen Allen, Virginia 23060-9345

Re: Registration Statement on Form S-3 (File No. 333-222354)

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 25,000,000 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. 333-222354) (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 June 28, 2018 (the "Base Prospectus"), the prospectus supplement, dated June 29, 2018 (the "Prospectus Supplement"), and the supplement to the Prospectus Supplement, dated May 31, 2019 (the "Supplement"), filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act. The Base Prospectus, Prospectus Supplement and 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 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, by and among the Company and J.P. Morgan Securities LLC, JMP Securities LLC and JonesTrading Institutional Services 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.

Mayer Brown is a global services provider comprising an association of legal practices that are separate entities including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian partnership).

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 May 31, 2019, 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. 1 TO
DISTRIBUTION AGREEMENT

May 31, 2019

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

Ladies and Gentlemen:

Reference is made to the Distribution Agreement, dated June 29, 2018 (the “**Distribution Agreement**”), by and among Dynex Capital, Inc., a Virginia corporation (the “**Company**”), J.P. Morgan Securities LLC (“**J.P. Morgan**”) and JMP Securities LLC (“**JMP**” and together with J.P. Morgan, the “**Existing Agents**”), pursuant to which the Company agreed, in its sole discretion, to issue and sell, from time to time, through the Existing Agents, as agent and/or principal, up to 10,000,000 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 1 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 Existing Agents hereby agree as follows:

A. Amendments to Distribution Agreement. The Distribution Agreement is amended as follows:

1. The definitions of the terms “Agent” and “Agents” in the first sentence of the Distribution Agreement are hereby amended to read as follows: “J.P. Morgan Securities LLC, JMP Securities LLC and JonesTrading Institutional Services LLC (each an “**Agent**” and collectively, the “**Agents**”).”
2. The definition of “Maximum Number” in the first sentence of the Distribution Agreement is hereby amended to read as follows: “25,000,000 shares”.
3. Section 10 of the Distribution Agreement is hereby amended to include the following subsections following JMP’s relevant information in each of the sentences in such section:

“and (iii) JonesTrading Institutional Services LLC, 900 Island Park Drive, Suite 160, Daniel Island, SC 29492, Email: Burke@jonestrading.com, Attention: Burke Cook”

“and (iii) Bryan Turley, Managing Director, 212-907-5333, bturley@jonestrading.com; Moe Cohen, Managing Director, 212-907-5332, moec@jonestrading.com; John D’Agostini, Director, 212-907-5324, johnd@jonestrading.com; Ryan Gerety, Vice President, 212-907-5332, ryang@jonestrading.com; Burke Cook, General Counsel, 212-907-5396, burke@jonestrading.com”

4. The following sections shall be added as Sections 20 and 21 of the Distribution Agreement:

“20. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Agent that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Agent of this Agreement or any Terms Agreement, and any interest and obligation in or under this Agreement or any Terms Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement or any Terms Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Agent that is a Covered Entity or a BHC Act Affiliate of such Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement or any Terms Agreement that may be exercised against such Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement or any Terms Agreement were governed by the laws of the United States or a state of the United States.

As used in this Section 20:

“BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

21. Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), each Agent is required to obtain, verify and record information that identifies its clients, including the Company, which information may include the name and address of its clients, as well as other information that will allow each Agent to properly identify its clients.”

- B. Obligations Binding upon JonesTrading Institutional Services LLC. JonesTrading Institutional Services LLC hereby agrees to be bound by the terms of the Distribution Agreement. JonesTrading Institutional Services LLC shall be considered to be an Agent under the Distribution Agreement to the same extent as if it were a party to the Distribution Agreement on the date of the execution thereof.
- C. 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.
- D. No Other Amendments; References to 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.
- E. 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 email transmission.
- F. 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. 1 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
Officer and Chief Operating Officer

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

J.P. MORGAN SECURITIES LLC

By: /s/ Brett Chalmers
Name: Brett Chalmers
Title: Vice President

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