
**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): December 23, 2011

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

On December 23, 2011, Dynex Capital, Inc., a Virginia corporation (the “Company”), entered into Amendment No. 1 to Equity Distribution Agreement (the “Amendment”) with JMP Securities LLC (“JMP”), amending the terms of the Equity Distribution Agreement, dated as of June 24, 2010, between the Company and JMP (the “Agreement”), the form of which is an exhibit to a Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on June 24, 2010.

The Amendment provides that the Company, from time to time after December 23, 2011 and during the term of the Agreement, as amended by the Amendment, on the terms and subject to the conditions set forth in the Agreement, as amended by the Amendment, may issue and sell through JMP, as the Company’s agent, up to 8,000,000 shares of the Company’s common stock, par value \$0.01 per share. Additionally, the Amendment provides that the reference in the Agreement to the registration statement on Form S-3 of the Company (File No. 333-149475) is replaced with reference to a subsequent registration statement on Form S-3 of the Company (File No. 333-173551). The Amendment also makes certain other conforming and updating changes to the Agreement. Pursuant to the terms of the Amendment, all other terms of the Agreement shall remain in full force and effect.

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed herewith as Exhibit 10.14.1 to this Current Report on Form 8-K and is incorporated herein by reference. In connection with the filing of the Amendment, the Company is filing as (i) Exhibit 5.1 to this Current Report on Form 8-K an opinion of Troutman Sanders LLP with respect to the validity of the issuance of shares of the Company’s common stock under the Agreement, as amended by the Amendment and (ii) Exhibit 8.1 to this Current Report on Form 8-K an opinion of Troutman Sanders LLP with respect to certain tax matters.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Troutman Sanders LLP with respect to the validity of the issuance of shares of the Company’s common stock under the Agreement, as amended by the Amendment.
8.1	Opinion of Troutman Sanders LLP with respect to certain tax matters.
10.14.1	Amendment No. 1 to Equity Distribution Agreement, dated as of December 23, 2011, by and between the Company and JMP.

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.

DYNEX CAPITAL, INC.

Date: December 23, 2011

By: /s/ Stephen J. Benedetti

Stephen J. Benedetti
Executive Vice President, Chief Operating
Officer and Chief Financial Officer



TROUTMAN SANDERS LLP
Attorneys at Law
Troutman Sanders Building
1001 Haxall Point
P.O. Box 1122 (23218-1122)
Richmond, Virginia 23219
804.697.1200 telephone
troutmansanders.com

December 23, 2011

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

Re: 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 preparation of a prospectus supplement and prospectus (together with the prospectus supplement, the "Prospectus") relating to the offer and sale, from time to time after December 23, 2011, of up to 8,000,000 shares (the "Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock"), covered by the Company's Registration Statement on Form S-3, file number 333-173551 (as the same may be amended and supplemented, the "Registration Statement"), filed with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). The Shares may be offered and sold from time to time pursuant to an Equity Distribution Agreement, dated as of June 24, 2011, by and between the Company and JMP Securities LLC, as amended by the Amendment No. 1 to Equity Distribution Agreement, dated as of December 23, 2011 (the "Distribution Agreement").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5)(i) of Regulation S-K.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such corporate records, agreements, and other instruments, certificates, orders, opinions, correspondence with public officials, certificates provided by the Company's officers and representatives, and other documents as we have deemed necessary or advisable for the purposes of rendering the opinion set forth herein, including (i) the corporate and organizational documents of the Company, including the Restated Articles of Incorporation, as amended to date (the "Restated Articles"), and the Amended and Restated Bylaws of the Company, as amended to date, (ii) the resolutions (the "Resolutions") of the Board of Directors of the Company with respect to the offering and sale of the Shares under the Distribution Agreement and certain related matters, (iii) the Registration Statement and exhibits thereto, including the Prospectus comprising a part thereof, and (iv) an executed copy of the Distribution Agreement.

For purposes of the opinions expressed below, we have assumed (i) the authenticity of all documents submitted to us as originals, (ii) the conformity to the originals of all documents submitted as certified, photostatic or electronic copies and the authenticity of the originals thereof, (iii) the legal capacity of natural persons, (iv) the genuineness of signatures not witnessed by us, (v) the due authorization, execution and delivery of all documents by all parties, other than the

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Company, and the validity, binding effect and enforceability thereof and (vi) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates we have reviewed.

In expressing the opinion set forth below, we have assumed that the Shares will not be issued or transferred in violation of the restrictions on ownership and transfer set forth in Article VI of the Restated Articles.

Based on the foregoing and in reliance thereon, and subject to the limitations, qualifications, assumptions, exceptions and other matters set forth herein, we are of the opinion that the Shares have been duly authorized and, when and if issued and delivered against payment therefor in accordance with the Restated Articles, the Registration Statement, the Resolutions and the Distribution Agreement (assuming that, upon any issuance of the Shares, the total number of shares of Common Stock issued and outstanding, together with the total number of shares of Common Stock reserved for issuance upon the exercise, exchange, conversion or settlement, as the case may be, of any exercisable or convertible security then outstanding, will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Restated Articles), the Shares will be validly issued, fully paid and nonassessable.

We are members of the bar of the Commonwealth of Virginia and are not purporting to be experts on, or generally familiar with, or qualified to express legal conclusions based upon, laws of any state or jurisdiction other than the federal laws of the United States of America and the Commonwealth of Virginia and we express no opinion as to the effect of the laws of any other jurisdiction or as to the securities or blue sky laws of any state (including, without limitation, Virginia), municipal law or the laws of any local agencies within any state (including, without limitation, Virginia). This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

Our opinion is as of the date hereof and we have no responsibility to update this opinion for events and circumstances occurring after the date hereof or as to facts relating to prior events that are subsequently brought to our attention and we disavow any undertaking to advise you of any changes in law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus and Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules or regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Troutman Sanders LLP

TROUTMAN SANDERS

Attorneys at Law
The Chrysler Building
405 Lexington Avenue
New York, New York 10174-0700
212.704.6000 telephone
troutmansanders.com

December 23, 2011

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

Ladies and Gentlemen:

We have acted as counsel to Dynex Capital, Inc., a Virginia corporation (“Dynex”), in connection with the preparation of a prospectus supplement and prospectus (together with the prospectus supplement, the “Prospectus”) included in a registration statement on Form S-3, file number 333-173551 (the “Registration Statement”), filed with the Securities and Exchange Commission (the “Commission”). The Prospectus relates to the issuance and sale by Dynex from time to time after December 23, 2011, pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act of 1933, as amended (the “Securities Act”), of up to 8,000,000 shares of common stock, \$0.01 par value per share.

You have requested our opinion regarding Dynex’s qualification as a real estate investment trust (“REIT”) pursuant to sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”), for its 2009 and 2010 taxable years. In addition, you have requested our opinion with respect to whether Dynex’s organization and contemplated method of operations are such as to enable it to continue to qualify as a REIT for its 2011 taxable year and subsequent taxable years.

Dynex has a number of wholly-owned subsidiaries (“qualified REIT subsidiaries”), the income, liabilities, and assets of which are consolidated with those of Dynex for U.S. federal income tax purposes. This letter refers to Dynex, together with such subsidiaries, as “Consolidated Dynex.” In connection with the opinions rendered below, we have examined such records, certificates, documents and other materials as we considered necessary or appropriate as a basis for such opinion, including, without limitation, the following:

1. The Articles of Incorporation of Dynex, as amended;
2. The bylaws of Dynex as amended and restated on March 26, 2008;

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3. Consolidated Dynex's federal income tax returns for its taxable years 2009 and 2010;
4. The 2010 Form 10-K of Consolidated Dynex;
5. The Prospectus; and
4. The representation letter dated the date hereof delivered to us by an officer of Dynex as to relevant factual matters and covenants as to future operations dated as of the date hereof (the "Representation Letter").

In connection with the opinions rendered below, we have assumed that each of the documents referred to above has been duly authorized, executed, and delivered, is authentic, if an original, or accurate, if a copy, and has not been amended, and is accurate, correct and complete in all material respects. We have further assumed that during Consolidated Dynex's 2011 taxable year and subsequent taxable years, it will continue to conduct its affairs in a manner that will make the representations set forth in the Representation Letter true for such years; and that neither Dynex nor any subsidiary of Dynex will make any amendments to its organizational documents after the date of this opinion that would affect Consolidated Dynex's qualification as a REIT for any taxable year.

Further, the opinion is based on the assumption that (i) Consolidated Dynex met certain asset, income and distribution requirements applicable to REITs, (ii) if Consolidated Dynex were ultimately found not to have met the REIT distribution requirements for any taxable year, such failure was due to reasonable cause and not due to willful neglect; (iii) each of Dynex and its subsidiaries has been and will continue to operate in accordance with the laws of the jurisdiction in which it was formed, and in the manner described in the relevant partnership agreement, LLC operating agreement or other organizational documents, (iv) there will be no changes in the applicable law of Virginia or of any other jurisdiction under the laws of which any of the entities comprising Dynex and its subsidiaries have been formed, and (v) each of the written agreements to which Dynex or its subsidiaries is a party has been and will be implemented, construed and enforced in accordance with its terms, without regard to any parole evidence. In addition, for the purposes of rendering this opinion, we have not made an independent investigation or reached independent conclusions as to the assumptions that we have made or of the facts set forth in any of the aforementioned documents, including, without limitation, the Registration Statement and the Representation Letter.

Based solely on the documents, assumptions, and representations set forth above, and without further investigation, we are of the opinion that Consolidated Dynex

qualified as a REIT in its 2009 and 2010 taxable years and that its organization and contemplated method of operation are such that it will continue to so qualify for its 2011 taxable year and subsequent taxable years. Except as described herein we have performed no further due diligence and have made no efforts to verify the accuracy or genuineness of the documents, assumptions, and representations set forth above.

The ability of Consolidated Dynex to qualify as a REIT for subsequent taxable years will depend on future events, some of which are not within the control of Consolidated Dynex. Additionally, it is not possible to predict whether the statements, representations, warranties, or assumptions on which we have relied to issue this opinion will continue to be accurate in the future. We will not review Consolidated Dynex's compliance with the documents or assumptions, or the representations set forth above. Accordingly, no assurance can be given that the actual results of Consolidated Dynex's operations for any given taxable year will satisfy the requirements for qualification and taxation as a REIT.

INTERNAL REVENUE SERVICE CIRCULAR 230 NOTICE: IN ACCORDANCE WITH CIRCULAR 230 AND AS YOU AND WE HAVE AGREED, OUR ADVICE HEREIN IS LIMITED TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES DESCRIBED HEREIN. ADDITIONAL ISSUES THAT ARE NOT DISCUSSED IN THIS OPINION COULD AFFECT THE U.S. FEDERAL INCOME TAX TREATMENT OF DYNEX OR THE MATTER THAT IS THE SUBJECT OF THIS OPINION. TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT REGULATIONS, WE ADVISE YOU THAT, UNLESS OTHERWISE EXPRESSLY INDICATED, ANY FEDERAL TAX ADVICE CONTAINED IN THIS OPINION WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES UNDER THE CODE.

The foregoing opinion is based on the Code and Treasury Regulations promulgated thereunder, each as amended from time to time and as in existence as of the date hereof, and on existing administrative and judicial interpretations thereof. Legislation enacted, administrative action taken, administrative interpretations or rulings, or judicial decisions promulgated or issued subsequent to the date hereof may result in tax consequences different from those anticipated by our opinion herein. Additionally, our opinion is not binding on the Internal Revenue Service or any court, and there can be no assurance that contrary positions may not be taken by the Internal Revenue Service.

The foregoing opinion is limited to the U.S. federal income tax matters addressed herein, and no other opinions are rendered with respect to other federal tax matters or to any issues arising under the tax laws of any other country, or any state or locality. We undertake no obligation to update the opinions expressed herein after the date of this

letter. This opinion letter is solely for the information and use of the addressee, and it speaks only as of the date hereof. Except as provided in the next paragraph, this opinion letter may not be distributed, relied upon for any purpose by any other person, quoted in whole or in part or otherwise reproduced in any document, or filed with any governmental agency without our express written consent.

We consent to the references to this firm in the Prospectus filed with the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement in which the Prospectus is included. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, or the Rules and Regulations of the Commission thereunder.

Very truly yours,

/s/ Troutman Sanders LLP

DYNEX CAPITAL, INC.
 AMENDMENT NO. 1 TO
 EQUITY DISTRIBUTION AGREEMENT

December 23, 2011

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

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement, dated June 24, 2010 (the “**Distribution Agreement**”), between Dynex Capital, Inc., a Virginia corporation (the “**Company**”), and JMP Securities LLC (“**JMP**”), pursuant to which the Company agreed to sell through JMP, as agent, up to 5,000,000 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 1 to Equity Distribution Agreement between JMP and the Company (this “**Amendment**”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Distribution Agreement. JMP and the Company agree as follows:

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

1. The second line of the caption of the Distribution Agreement, consisting of the phrase “5,000,000 SHARES”, is deleted.
2. The first sentence of the Distribution Agreement is deleted and replaced with the following:
 “DYNEX CAPITAL, INC., a Virginia corporation (the “**Company**”), confirms its agreement (as such agreement may be amended from time to time, this “**Agreement**”) with JMP Securities LLC (“**JMP**”), as follows:”.
3. The first sentence of Section 1 of the Distribution Agreement is deleted and replaced with the following:
 “The Company agrees that, from time to time after December 23, 2011 and during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through JMP, acting as agent, up to 8,000,000 shares (the “**Shares**”) of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”).”
4. In Section 1 of the Distribution Agreement, the reference to “a registration statement on Form S-3 (File No. 333-149475), and two pre-effective amendments thereto” in the second paragraph is deleted and replaced with “a registration statement on Form S-3 (File No. 333-173551), and one pre-effective amendment thereto”.

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5. In Section 5(n) of the Distribution Agreement, the phrase:
- “Except (i) as set forth in the Registration Statement and the Prospectus or in filings with the Commission via IDEA pursuant to Section 16 of the Exchange Act, (ii) for holders of shares of the Company’s Series D 9.50% Cumulative Convertible Preferred Stock, \$.01 par value, and (iii) for holders of common stock options outstanding on the date hereof,”
- is deleted and replaced with the following:
- “Except (i) as set forth in the Registration Statement and the Prospectus or in filings with the Commission via IDEA pursuant to Section 16 of the Exchange Act and (ii) for holders of common stock options outstanding on the date hereof.”
6. In Section 5(mm) of the Distribution Agreement, the phrase:
- “The Company is not a party to any agreement with an agent or underwriter for any ‘at-the-market’ or continuous equity transaction other than this Agreement.”
- is deleted and replaced with the following:
- “As of December 23, 2011, the Company is not a party to any agreement with an agent or underwriter for any ‘at-the-market’ or continuous equity transaction other than this Agreement.”
7. Throughout the Distribution Agreement, all references to “BDO Seidman LLP” are deleted and replaced with “BDO USA, LLP”.
8. In Section 13 of the Distribution Agreement:
- (a) the reference to “DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, fax no.: (212) 884-8494, Attention: James T. Seery;” is deleted and replaced with “Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022, fax no.: (212) 521-5450, Attention: Daniel I. Goldberg;”, and
- (b) the reference to “Dynex Capital, Inc., 4551 Cox Road, Suite 300, Glen Allen, VA 23060, phone: (804) 217-5800, fax no.: (804) 217-5860, Attention: Stephen J. Benedetti, with a copy to Troutman Sanders LLP, 222 Central Park Avenue, Suite 2000, Virginia Beach, VA 23462, phone: (757) 687-7719, fax no.: (757) 687-1501, Attention: James J. Wheaton.” is deleted and replaced with “Dynex Capital, Inc., 4991 Lake Brook Drive, Suite 100, Glen Allen, VA 23060, phone: (804) 217-5800, fax no.: (804) 217-5860, Attention: Stephen J. Benedetti, with a copy to Troutman Sanders LLP, 1001 Haxall Point, Richmond, VA 23219, phone: (804) 697-1861, fax no.: (804) 698-6015, Attention: Susan S. Ancarrow.”.

9. The first sentence of the Form of Placement Notice attached as Exhibit A to the Distribution Agreement (the “**Form of Placement Notice**”) shall be amended to add “, as amended on December 23, 2011” immediately after “June 24, 2010”. The last sentence of the Form of Placement Notice is deleted and replaced with the following:
- “ADDITIONAL SALES PARAMETERS MAY BE ADDED, SUCH AS THE SPECIFIC DATES THE SHARES MAY NOT BE SOLD ON AND/OR THE MANNER IN WHICH SALES ARE TO BE MADE BY JMP.”
10. The names, titles, and contact information of the three JMP Securities LLC employees listed in Exhibit C are deleted and replaced with the following:
- | | |
|---|-------------------------------|
| Scott Raaka
(Director, Corporate Services) | (sraaka@jmpsecurities.com) |
| Janet Tarkoff
(Managing Director, General Counsel) | (jtarkoff@jmpsecurities.com) |
| Tosh Chandra
(Vice President, Investment Banking) | (tchandra@jmpsecurities.com) |
| Gil Mogavero
(Chief Compliance Officer) | (gmogavero@jmpsecurities.com) |
11. The first paragraph of the Form of Officer Certificate attached as Exhibit E to the Distribution Agreement (the “**Form of Officer Certificate**”) is deleted and replaced with the following:
- “The undersigned, the duly qualified and elected _____, of Dynex Capital, Inc., a Virginia corporation (the “Company”), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(m) of the Equity Distribution Agreement, dated June 24, 2010, as amended on December 23, 2011 (the “Distribution Agreement”), between the Company and JMP Securities LLC (“JMP”), that to the best of the knowledge of the undersigned:”.
- All references to “Sales Agreement” in the Form of Officer Certificate are deleted and replaced with “Distribution Agreement”.
12. The first line on the last page of the Distribution Agreement, consisting of “Exhibit F”, is deleted and replaced with “Exhibit G”.
- B. Prospectus Supplement. The Company shall file a 424(b) Prospectus Supplement reflecting this Amendment within 2 business days of the date hereof.
- C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.
- 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 Amendment by one party to the other may be made by facsimile or email transmission.

[Remainder of page intentionally left blank.]

If the foregoing correctly sets forth the understanding between the Company and JMP, please so indicate in the space provided below for that purpose, whereupon this Amendment No. 1 to Equity Distribution Agreement shall constitute a binding agreement between the Company and JMP.

Very truly yours,

DYNEX CAPITAL, INC.

By: /s/ Stephen J. Benedetti

Name: Stephen J. Benedetti

Title: Executive Vice President, Chief Operating Officer and
Chief Financial Officer

ACCEPTED as of the date first-above written:

JMP SECURITIES LLC

By: /s/ Kent Ledbetter

Name: Kent Ledbetter

Title: Director of Investment Banking