
**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 27, 2017

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))

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 December 27, 2017, Dynex Capital, Inc., a Virginia corporation (the “Company”), entered into an amendment no. 1 (the “Amendment”) to the amended and restated equity distribution agreement, dated March 31, 2017 (the “Original Agreement” and, as amended by the Amendment, the “Amended Agreement”), between the Company and JMP Securities LLC (the “Agent”).

The Amendment increases the number of shares of common stock, par value \$0.01 per share, of the Company (the “Common Stock”) that the Company may offer and sell under the Amended Agreement.

Pursuant to the Amended Agreement, on or after December 27, 2017, the Company may offer and sell up to 10,000,000 shares of Common Stock from time to time through the Agent, as the Company’s sales agent under the Amended Agreement. Sales of shares of the Common Stock, if any, under the Amended Agreement may be made in sales deemed to be “at the market offerings” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended, including sales made directly on or through the New York Stock Exchange or on any other existing trading market for the Common Stock, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices or by any other method permitted by law.

The Agent is entitled to compensation of up to two percent (2.0%) of the gross sales price per share for any shares of the Common Stock sold by the Agent under the Amended Agreement. The Amended Agreement contains various representations, warranties and agreements by the Company and the Agent, conditions to closing, indemnification rights and obligations of the parties and termination provisions.

From time to time, in the ordinary course of business, the Agent and its affiliates have provided, and in the future the Agent and its affiliates may provide, investment banking services to the Company and have received or may receive fees from the Company for the rendering of such services.

The foregoing description of the Amended Agreement is not complete and is qualified in its entirety by reference to the full text of the Original Agreement and the Amendment, copies of which are filed herewith as Exhibit 10.34 and Exhibit 10.34.1 to this Current Report on Form 8-K, respectively, and are 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 legality of the shares of Common Stock to be sold under the Amended Agreement 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	<u>Opinion of Troutman Sanders LLP with respect to the legality of the shares.</u>
8.1	<u>Opinion of Troutman Sanders LLP with respect to certain tax matters.</u>
10.34	<u>Amended and Restated Equity Distribution Agreement between Dynex Capital, Inc. and JMP Securities LLC, dated March 31, 2017 (incorporated herein by reference to Exhibit 10.34 to Dynex Capital, Inc.'s Current Report on Form 8-K filed April 3, 2017).</u>
10.34.1	<u>Amendment No. 1, dated December 27, 2017, to Amended and Restated Equity Distribution Agreement between Dynex Capital, Inc. and JMP Securities LLC, dated March 31, 2017.</u>
23.1	<u>Consent of Troutman Sanders LLP (included in exhibit 5.1).</u>
23.2	<u>Consent of Troutman Sanders LLP (included in exhibit 8.1).</u>

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 27, 2017

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

Troutman Sanders LLP
Troutman Sanders Building, 1001 Haxall Point
Richmond, VA 23219

troutman.com



006174.087763

December 27, 2017

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

Re: Registration Statement on Form S-3 (File No. 333-200859)

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, the "Prospectus") included in a registration statement on Form S-3, file number 333-200859 (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on December 11, 2014 and declared effective under the Securities Act on December 30, 2014. The Prospectus relates to the issuance and sale by the Company from time to time on or after December 27, 2017, pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act, of up to 10,000,000 shares (the "Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock").

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, (iii) the Registration Statement and exhibits thereto, including the Prospectus comprising a part thereof, and (iv) an executed copy of the Amended and Restated Equity Distribution Agreement, dated as of March 31, 2017, by and between the Company and JMP Securities LLC, as sales agent, as amended by Amendment No. 1, dated December 27, 2017 (the "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 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 Articles VI and VII 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 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 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 Company's Current Report on Form 8-K, the incorporation of this opinion by reference in 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 LLP
875 Third Avenue
New York, NY 10022

troutman.com



006174.087763

December 27, 2017

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

Re: Dynex Capital, Inc.

Ladies and Gentlemen:

We have acted as counsel to Dynex Capital, Inc., a Virginia corporation ("Dynex" or "you"), in connection with the preparation of a prospectus supplement and prospectus (together, the "Prospectus") included in a registration statement on Form S-3, file number 333-200859 (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on December 11, 2014 and declared effective under the Securities Act on December 30, 2014. The Prospectus relates to the issuance and sale by Dynex from time to time on or after December 27, 2017, pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act, of up to 10,000,000 shares of common stock, pursuant to the Amended and Restated Equity Distribution Agreement, dated March 31, 2017, by and between Dynex and JMP Securities LLC, as amended by Amendment No. 1, dated December 27, 2017 (the "Agreement").

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 2015 and 2016 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 2017 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 Restated Articles of Incorporation of Dynex, as amended, effective June 2, 2014;

2. The Amended and Restated Bylaws of Dynex, effective as of May 16, 2017;
3. Consolidated Dynex's federal income tax return for its taxable year 2014 and 2015;
4. The 2016 Form 10-K of Consolidated Dynex;
5. The Registration Statement and the Prospectus;
6. 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 (the "Representation Letter");
7. The Agreement; and
8. such other documents as we have deemed necessary or appropriate for purposes of the opinions provided herein.

In connection with the opinion 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 2017 taxable year and subsequent taxable years, it has conducted, and 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 articles of incorporation, bylaws, 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, the Prospectus, the Prospectus Supplement, 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 2015 and 2016 taxable years and that its organization and contemplated method of operation are such that it will continue to so qualify for its 2017 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.

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 paragraphs, 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 a Current Report on Form 8-K incorporated by reference into 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
 AMENDED AND RESTATED
EQUITY DISTRIBUTION AGREEMENT

December 27, 2017

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

Ladies and Gentlemen:

Reference is made to the Amended and Restated Equity Distribution Agreement, dated March 31, 2017 (the “Distribution Agreement”), between Dynex Capital, Inc., a Virginia corporation (the “Company”), and JMP Securities LLC (“JMP”), pursuant to which the Company agreed, in its sole discretion, to issue and sell, from time to time, through JMP, as agent, up to 7,416,520 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 1 to Amended and Restated Equity Distribution Agreement between the Company and JMP (this “Amendment”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Distribution Agreement. The Company and JMP agree as follows:

- A. Amendments to Distribution Agreement. The Distribution Agreement is amended as follows:
 - 1. 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 on or after December 27, 2017 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 10,000,000 shares (the “Shares”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”); *provided, that*, such number of Shares available for offer and sale are in addition to any offers and sales of Shares that have been made prior to the date hereof under the Prospectus Supplement dated March 31, 2017.”
 - 2. Exhibit A is amended by adding “as amended on December 27, 2017” immediately after “March 31, 2017”.
 - 3. Exhibit E is amended by adding “as amended on December 27, 2017” immediately after “March 31, 2017”.
- B. Prospectus Supplement. The Company shall file a Prospectus Supplement pursuant to Rule 424(b) of the Securities Act reflecting this Amendment within two 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 Distribution Agreement shall continue in full force and effect.

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- 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.
- 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 between the Company and JMP, please so indicate in the space provided below for that purpose, whereupon this Amendment No. 1 to Amended and Restated 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 Financial Officer and Chief Operating Officer

ACCEPTED as of the date first-above written:

JMP SECURITIES LLC

By: /s/ Thomas Kilian
Name: Thomas Kilian
Title: Chief Operating Officer