

DYNEX CAPITAL INC
Form 8-K
September 04, 2018

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): September 4, 2018

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

23060-9245

(Address of principal executive offices)

(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 September 4, 2018, Dynex Capital, Inc., a Virginia corporation (the Company), entered into an amendment no. 1 (the Amendment) to the equity distribution agreement, dated November 21, 2016 (the Original Agreement and, as amended by the Amendment, the Amended Agreement), by and among the Company, Ladenburg Thalmann & Co. Inc. (Ladenburg) and JonesTrading Institutional Services LLC (Jones, and with Ladenburg, each an Agent and collectively, the Agents).

The Amendment amends the Original Agreement (i) to reflect the effectiveness of a new registration statement on Form S-3 (file no. 333-222354) of the Company, (ii) to amend the term Maximum Amount to refer to \$83,099,644, which includes an aggregate of \$33,099,644 of Preferred Stock (as defined below) that the Company has sold pursuant to the Original Agreement prior to entry into the Amendment under the Company's registration statement on Form S-3 (file no. 333-200859); and (iii) to provide that in no event will the Company sell pursuant to the Amended Agreement more than 5,700,000 shares of the Company's 8.50% Series A Cumulative Redeemable Preferred Stock, par value \$0.01 per share, or more than 4,750,000 shares of the Company's 7.625% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the Series A and Series B Preferred Stock together, the Preferred Stock), which 4,750,000 shares includes an aggregate of 1,358,999 Series B Shares sold prior to the date hereof under the Company's registration statement on Form S-3 (333-200859).

Pursuant to the Amended Agreement, on or after September 4, 2018, the Company may offer and sell up to \$50,000,000 of aggregate value of shares of the Company's Preferred Stock from time to time through the Agents, each as the Company's sales agents under the Amended Agreement. Sales of shares of the Preferred 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 Preferred Stock, or sales made to or through a market maker other than on an exchange, or, subject to a written notice from the Company, by any other method permitted by law.

Under the terms of the Amended Agreement, the Company may also sell shares of the Preferred Stock to either Agent as principal for such Agent's own account at a price agreed upon at the time of sale. If the Company sells shares of the Preferred Stock to an Agent as principal, the Company and the applicable Agent will enter into a separate terms agreement.

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

From time to time, in the ordinary course of business, Ladenburg and its affiliates have provided, and in the future both Agents and their respective 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 or incorporated by reference herewith as Exhibit 10.29 and Exhibit 10.29.1 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 Preferred 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.

| Exhibit No. | Description |
|--------------------|---|
| 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> |
| 10.29 | <u>Equity Distribution Agreement by and among Dynex Capital, Inc., Ladenburg Thalmann & Co. Inc., and JonesTrading Institutional Services LLC, dated November 21, 2016 (incorporated herein by reference to Exhibit 10.29 to Dynex Capital, Inc.'s Current Report on Form 8-K filed November 22, 2016).</u> |
| 10.29.1 | <u>Amendment No. 1, dated September 4, 2018, to Equity Distribution Agreement by and among Dynex Capital, Inc., Ladenburg Thalmann & Co. Inc., and JonesTrading Institutional Services LLC.</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: September 4, 2018

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