

DYNEX CAPITAL INC
Form 424B2
June 24, 2010
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Filed Pursuant to Rule 424(b)(2)
Registration No. 333-149475

PROSPECTUS SUPPLEMENT

(To Prospectus dated April 17, 2008)

Dynex Capital, Inc.

Up to 5 Million Shares of Common Stock

We have entered into an equity distribution agreement with JMP Securities LLC relating to shares of our common stock offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the sales agreement, we may offer and sell up to 5 million shares of our common stock from time to time through JMP Securities LLC, as our agent for the offer and sale of the shares of common stock.

Our common stock is listed on the New York Stock Exchange under the symbol DX. The last reported sale price of our common stock on the New York Stock Exchange on June 23, 2010 was \$9.57 per share.

Sales of shares of our common stock, if any, under this prospectus supplement and the accompanying prospectus may be made in sales deemed to be at the market offerings as defined in Rule 415 under the Securities Act of 1933, as amended (or the Securities Act), including sales made directly on the New York Stock Exchange, the existing trading market of our common stock, sales made to or through a market maker other than on an exchange, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law. Upon written instructions from us, JMP Securities LLC will use its commercially reasonable efforts consistent with its sales and trading practices to solicit offers to purchase shares of our common stock under the terms and subject to the conditions set forth in the sales agreement. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

JMP Securities LLC will be entitled to compensation of up to 2.0% of the gross sales price per share for any shares of common stock sold under the sales agreement, as further described herein under the caption Plan of Distribution. In connection with the sale of the shares of common stock on our behalf, JMP Securities LLC may be deemed to be an underwriter within the meaning of the Securities Act and the compensation of JMP Securities LLC may be deemed to be underwriting commissions or discounts.

Investing in our common stock involves certain risks. Before buying any shares, you should read the discussion of material risks of investing in our common stock under the caption Risk Factors beginning on page S-10 of this prospectus supplement and beginning on page 7 of our annual report on Form 10-K for the year ended December 31, 2009, which is incorporated by reference into this prospectus supplement and the accompanying prospectus, and in our periodic reports and other information that we file from time to time with the Securities and Exchange Commission, or SEC.

Neither the SEC nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.

JMP Securities

The date of this prospectus supplement is June 24, 2010.

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This document is in two parts. The first part is the prospectus supplement, which describes the specific terms of this offering and also adds to and updates information contained in the accompanying base prospectus and the documents incorporated by reference into this prospectus supplement and the base prospectus. The second part, the base prospectus, gives more general information about securities we may offer from time to time, some of which does not apply to this offering. Generally, when we refer only to the prospectus, we are referring to both parts combined, and when we refer to the accompanying prospectus, we are referring to the base prospectus.

If the description of this offering varies between this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement.

You should rely only on the information contained in, or incorporated by reference into, this prospectus supplement and the accompanying prospectus. We have not, and JMP Securities LLC has not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and JMP Securities LLC is not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus and the documents incorporated therein by reference is accurate only as of its respective date or dates or on the date or dates that are specified in these documents. Our business, financial condition, results of operations and prospects may have changed since those dates.

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FORWARD-LOOKING STATEMENTS

Certain written statements we make in this prospectus supplement and the accompanying prospectus that are not historical facts constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements contained in this prospectus supplement and the accompanying prospectus addressing our results of operations, our operating performance, events or developments that we expect or anticipate will occur in the future, including statements relating to investment strategies, net interest income, earnings or earnings per share and market share, as well as statements expressing optimism or pessimism about future operating results, are forward-looking statements. The forward-looking statements are based upon our management's views and assumptions as of the date of this prospectus supplement regarding future events and operating performance and are applicable only as of the dates of such statements. These forward-looking statements may involve factors that could cause our actual results to differ materially from historical results or from any results expressed or implied by such forward-looking statements. We caution readers not to place undue reliance on forward-looking statements, which may be based on assumptions and anticipated events that do not materialize.

Factors that may cause actual results to differ from historical results or from any results expressed or implied by forward-looking statements are disclosed in our reports on Forms 10-K, 10-Q and 8-K incorporated by reference in this prospectus supplement, and include the following:

Risks related to our access to credit markets;

Risks related to the actions or inaction of Congress, the Treasury, the Federal Reserve, Fannie Mae and Freddie Mac;

Risks involving the action or inaction of other third parties, including lenders and guarantors;

Risks related to our business, including changes in prepayment rates, interest rates, yield curves, credit ratings for the securities we own, the liquidity or value of our assets or other adverse impacts on our ability to manage credit risk;

Risks related to regulatory, accounting and other legal requirements;

Risks involving our status as a REIT, including our failure to maintain our status as a REIT; and

Risks of an investment in our common stock, including the Risk Factors described beginning on page S-10 below.

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SUMMARY

The following information is qualified in its entirety by the more detailed information and financial statements and notes thereto appearing elsewhere in this prospectus supplement and the accompanying prospectus or incorporated by reference into this prospectus supplement and the accompanying prospectus. We encourage you to read this prospectus supplement and the accompanying prospectus, as well as the information which is incorporated by reference into this prospectus supplement and the accompanying prospectus, in their entirety. You should carefully consider the risks identified in our Annual Report on Form 10-K for the year ended December 31, 2009, which is incorporated by reference into this prospectus supplement and the accompanying prospectus, and in this prospectus supplement before making an investment decision to purchase shares of our common stock. All references to we, our, us or the Company in this prospectus supplement and the accompanying prospectus mean Dynex Capital, Inc.

The Company

Our Business

We are a real estate investment trust, or REIT, which invests in mortgage securities and loans on a leveraged basis. We were incorporated in Virginia on December 18, 1987 and commenced operations in February 1988. Our principal executive offices are located at 4991 Lake Brook Drive, Suite 100, Glen Allen, Virginia 23060 and our telephone number is 804-217-5897.

Our objective is to provide attractive risk-adjusted returns to our shareholders over the long term through dividends paid and through capital appreciation. Our strategy consists of investments in mortgage-backed securities (MBS), including Agency and non-Agency securities, and in securitized mortgage loans. As of March 31, 2010, our investment portfolio consisted of \$558.9 million in Agency MBS, \$188.7 million in non-Agency MBS, and \$204.6 million in securitized mortgage loans. Our Agency and non-Agency MBS are recorded on our consolidated balance sheets at their fair value, and our securitized mortgage loans are recorded on our consolidated balance sheets at amortized cost.

Agency MBS are securities issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), or an agency of the U.S. government, such as the Government National Mortgage Association (Ginnie Mae). The majority of our Agency MBS are collateralized by residential mortgage loans, which generally have a variable interest rate, while a minor portion of our Agency MBS are collateralized by commercial mortgage loans, which generally have a fixed interest rate.

Our investments in Agency MBS are principally in Hybrid Agency ARMs, Agency ARMs, and fixed-rate Agency MBS. Hybrid Agency ARMs are residential MBS (RMBS) collateralized by hybrid adjustable-rate mortgage loans, which have a fixed-rate of interest for a specified period (typically three to ten years) and which then reset their interest rates at least annually to an increment over a specified interest rate index. Hybrid Agency ARMs that are within twelve months of the end of their fixed-rate periods are classified within Agency ARMs. Agency ARMs are RMBS collateralized by adjustable rate mortgage loans that have interest rates that generally will adjust at least annually to an increment over a specified interest rate index. In an attempt to reduce our exposure to increases in interest rates, we have focused on shorter-duration ARMs. As of March 31, 2010, our Agency MBS were collateralized by approximately \$253.9 million in Hybrid Agency ARMs, \$302.1 million in Agency ARMs, and \$3.0 million in fixed rate Agency MBS.

Our investments in non-Agency MBS are principally in higher quality, fixed-rate securities. As of March 31, 2010, \$183.6 million of our non-Agency securities were commercial MBS (CMBS), of which \$179.5 million were AAA -rated or guaranteed by Fannie Mae or Freddie Mac.

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We employ leverage in order to increase the overall yield on our invested capital. Our primary source of income is net interest income, which is the excess of the interest income earned on our investments over the cost of financing these investments. Although our intention is generally to hold our investments on a long-term basis, we may occasionally sell investments prior to their maturity.

We finance our investments through a combination of short-term repurchase agreements, securitization financing, and equity capital. In the first quarter of 2010 we financed \$60.8 million in par value of CMBS with \$50.8 million in financing provided by the Federal Reserve Bank of New York pursuant to its Term Asset-Backed Securities Loan Facility (TALF) program. Similar to securitization financing, TALF financing is non-recourse to the Company. The TALF program will be discontinued by the New York Federal Reserve in the second quarter of 2010, and we do not anticipate financing any additional investments through the TALF.

As a REIT, we are required to distribute to our shareholders as dividends on our preferred and common stock at least 90% of our taxable income, which is our income as calculated for income tax purposes after consideration of our tax net operating loss carryforwards (NOLs), which had a balance of approximately \$156.7 million as of December 31, 2008. We anticipate utilizing approximately \$7.5 million of the NOL carryforward to offset our 2009 taxable income, but this amount is subject to change as we complete our 2009 tax return. Provided that we do not experience an ownership shift as defined under Section 382 of the Internal Revenue Code (Code), we may utilize the NOLs to offset portions of our distribution requirements for our REIT taxable income with certain limitations. If we do incur an ownership shift under Section 382 of the Code, then the use of the NOLs to offset REIT distribution requirements may be limited.

Investment Strategy

Our investment strategy contemplates the allocation of our capital in investments that in our view have attractive risk-adjusted return profiles. Because we use leverage to enhance the returns on our invested capital, we must evaluate the attractiveness and risk of any investment based on the actual amount of the investment and the amount of equity capital (i.e., investment less financing) allocated to each investment. Our strategy for the last several years has included the investment in short-duration, high-grade Agency MBS with less exposure to credit risk, interest rate risk, and liquidity risk. In 2009, we also began investing in CMBS rated AAA by at least one of the nationally recognized rating services.

We have invested our capital primarily in Agency MBS because of the attractive risk-adjusted return profile of that strategy. We expect to continue primarily investing in shorter-duration, high grade securities such as Agency MBS and AAA -rated CMBS and RMBS for the foreseeable future depending on the nature and risks of the investment, its expected return, and future economic and market conditions. With respect to our investment in Agency MBS, we invest in Hybrid Agency ARMs and Agency ARMs and, to a lesser extent, fixed-rate Agency MBS.

Interest rates on the ARM loans collateralizing the Hybrid Agency ARMs and Agency ARMs are based on specific index rates, such as the one-year constant maturity treasury (CMT) rate, the London Interbank Offered Rate (LIBOR), the Federal Reserve U.S. 12-month cumulative average one-year CMT (MTA), or the 11th District Cost of Funds Index (COFI). These mortgage loans will typically have interim and lifetime caps on interest rate adjustments, or interest rate caps, limiting the amount that the rates on these loans may reset in any given period.

At March 31, 2010, our investment portfolio consisted of \$558.9 million in Agency MBS, \$183.6 million in non-Agency CMBS, \$5.1 million in non-Agency RMBS, \$144.0 million in securitized commercial mortgage loans (including \$27.4 million of such loans fully-defeased with cash), \$60.6 million in securitized single-family residential mortgage loans, and \$2.2 million in unsecuritized mortgage loans. The CMBS, non-Agency RMBS and commercial mortgage loans generally carry a fixed rate of interest. The single-family mortgage loans are predominantly variable rate based primarily on a spread to six month LIBOR.

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Financing Strategy

As noted above, we use leverage to enhance the returns of our investments. Currently, we use a combination of repurchase agreements and securitizations to finance our investments and have used the TALF program to finance CMBS. We may occasionally hedge our borrowing costs by entering into derivative instruments such as interest rate caps and interest rate swaps. Below is a discussion of our financing strategy for our different investments.

Agency MBS

We generally finance our Agency MBS by borrowing against a substantial portion of the market value of these assets utilizing repurchase agreements. Repurchase agreements are financings under which we pledge our Agency MBS as collateral to secure loans made by the repurchase agreement counterparty (i.e., the lender). The amount borrowed under a repurchase agreement is usually limited by the lender to a percentage of the estimated market value of the pledged collateral, which is normally up to 95% for Agency MBS. The difference between the market value of the pledged Agency MBS collateral and the amount of the repurchase agreement is the amount of equity we have in the position and is intended to provide the lender some protection against fluctuations of value in the collateral and/or the failure by us to repay the borrowing.

Under repurchase agreement arrangements, a lender may require that we pledge additional assets by initiating a margin call if the fair value of our pledged collateral declines below a required margin amount specified within the terms of the particular repurchase agreement. Our pledged collateral fluctuates in value primarily due to principal payments and changes in market interest rates and spreads, prevailing market yields, actual or anticipated prepayment speeds and other market conditions. Lenders may also initiate margin calls during periods of market stress. If we fail to meet any margin call, our lenders have the right to terminate the repurchase agreement and sell the collateral pledged. We will set aside securities and/or cash from time to time in order to lower our overall debt to equity ratio and to maintain financial flexibility to meet margin calls from our lenders.

With respect to financing our Agency MBS, we expect to maintain an effective debt to equity capital ratio of between five and nine times our equity capital invested in Agency MBS, although the ratio may vary from time to time depending upon market conditions and other factors.

Non-Agency Securities

We generally finance our AAA -rated non-Agency securities by borrowing against a portion of the market value of these assets utilizing repurchase agreements. We are not currently borrowing against non-Agency securities that are rated below AAA .

Like Agency MBS, the amount borrowed under a repurchase agreement for non-Agency securities is usually limited by the lender to a certain percentage of the estimated market value of the pledged collateral, which is normally up to 85% for non-Agency securities. Similar to Agency MBS, we are subject to margin calls by lenders, and if we fail to meet any margin call, our lenders have the right to terminate the repurchase agreement and sell the collateral pledged. We will set aside securities and/or cash from time to time in order to lower our overall debt to equity ratio and to maintain financial flexibility to meet margin calls from our lenders. With respect to financing our non-Agency securities, we expect to maintain an effective debt to equity capital ratio of between two and five times our equity capital invested in non-Agency securities, although the ratio may vary from time to time depending upon market conditions and other factors.

In June 2009, the New York Federal Reserve began accepting certain AAA -rated CMBS as eligible collateral for financing under its TALF program. The financing is on a non-recourse basis for periods ranging from three to five years. As of March 31, 2010, we had AAA -rated CMBS with a fair value of \$61.6 million and a par value of \$60.8 million which were purchased from third parties, and financed with \$50.8 million under the TALF program at a weighted average fixed rate of interest of 2.73% for three years. We do not currently anticipate using additional financing under the TALF program.

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Repurchase agreement borrowings generally will have a term of between one and three months and carry a rate of interest based on a spread to an index, such as LIBOR. In prior years, repurchase agreement terms for certain collateral could be as long as one year, though such terms are less common in the marketplace today. Repurchase agreement financing is provided principally by major financial institutions and major broker-dealers. Money market funds provide a significant source of liquidity for the repurchase agreement market, through collateral-based lending to the financial institutions and broker-dealer community that, in turn, is provided to the repurchase agreement market. In order to reduce our exposure to counterparty related risk, we generally seek to diversify our exposure by entering into repurchase agreements with multiple lenders. Together with Agency MBS, our maximum net exposure, which is defined as the difference between the amount loaned to us and the value of the securities pledged by us as collateral to any single repurchase agreement lender was \$23.2 million as of March 31, 2010.

In the future, we may use other sources of funding in addition to repurchase agreements and TALF borrowings to finance our Agency MBS and non-Agency portfolios including, but not limited to, other types of collateralized borrowings such as loan agreements, lines of credit, commercial paper, or the issuance of equity or debt securities.

Securitized Mortgage Loans

We have financed our securitized mortgage loans with securitization financing issued by us to third parties. Through limited-purpose finance subsidiaries, the Company has issued non-recourse bonds pursuant to indentures which are collateralized by the mortgage loans. Each series of securitization financing may consist of various classes of bonds at either fixed or variable rates of interest and having varying repayment terms. Payments received on securitized mortgage loans and reinvestment income earned thereon are used to make payments on the securitization financing bonds. As of March 31, 2010, we had approximately \$127.8 million of securitization financing collateralized by commercial mortgage loans that carried a fixed-rate of interest and approximately \$23.0 million collateralized by single-family mortgage loans that carried a variable-rate of interest which resets monthly based on a spread to LIBOR.

The obligations under securitization financing are payable solely from the cash flows generated by the securitized mortgage loans collateralizing the financing and are otherwise non-recourse to the Company. The stated maturity date for each class of bonds is generally calculated based on the final scheduled payment date of the underlying collateral. The actual maturity of each class will be directly affected by the rate of principal prepayments on the related collateral. Generally we will have the right to redeem the securitization financing at its outstanding principal balance plus accrued interest after a certain date or once the securitization financing is paid down to a certain percentage of its original principal balance. As a result, the actual maturity of any class of a series of securitization financing may occur earlier than its stated maturity.

Hedging Activities

We have and will continue to use derivative instruments to hedge our exposure to changes in interest rates. For example, during a period of rising interest rates, we may be exposed to reductions in our net interest income because interest rates on our investments may not reset as frequently as the interest rates on our repurchase agreement and securitization financing borrowings, or if we have financed fixed rate assets with floating rate borrowings. In an effort to protect our net interest income during a period of rising interest rates, we may enter into certain hedging transactions including entering into interest rate swap agreements and interest rate cap agreements.

An interest rate swap agreement allows us to fix the borrowing cost on a portion of our repurchase agreement or securitization financing for a specified period of time. In an interest rate swap transaction, we will pay an agreed upon fixed rate of interest determined at the time of entering into the agreement for a period typically between two and five years while receiving interest based on a floating rate such as LIBOR. An interest rate cap agreement is a contract whereby we, as the purchaser, pay a fee in exchange for the right to receive payments equal to the principal (i.e., notional amount) times the difference between a specified interest rate and a future interest rate (typically LIBOR) during a defined active period of time. As of March 31, 2010, we had \$180.0 million in interest rate swaps with a weighted average fixed

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rate of interest of 1.41% and a weighted average remaining term to maturity of approximately 31 months. We have not entered into any interest rate cap agreements as of March 31, 2010.

In addition, in a period of rising rates we may experience a decline in the carrying value of our Agency MBS and non-Agency securities, which will impact our shareholders' equity and common book value per share. As a result, we may also utilize derivative financial instruments such as interest rate swap and interest rate cap agreements in an effort to protect our book value.

Discussion of Allocation of Shareholders' Equity

The following table summarizes the allocation of our \$183.6 million of shareholders' equity as of March 31, 2010 and the net earnings contribution for the first quarter of 2010 to each component of allocated capital.

	Asset carrying basis ⁽¹⁾	Associated financing ⁽²⁾	Allocated shareholders equity capital	1Q10 Earnings Contribution ⁽³⁾
	(dollars in thousands)			
Agency MBS	\$ 558,935	\$ 490,754	\$ 68,181	\$ 4,541
Securitized single-family mortgage loans	60,581	45,587	14,994	526
Securitized commercial mortgage loans	144,028	119,303	24,725	590
CMBS	183,606	145,130	38,476	1,681
Non-Agency MBS	5,131	3,183	1,948	126
Other investments	2,156		2,156	(227)
Hedging instruments		187	(187)	(458)
Total investment portfolio	954,437	804,144	150,293	6,779
Cash and cash equivalents	30,714		30,714 ⁽⁴⁾	3
Other assets/liabilities	9,307	6,670	2,637	6
	\$ 994,458	\$ 810,814	\$ 183,644	\$ 6,788

(1) Carrying basis represents investment basis as presented in our consolidated financial statements. Agency MBS, CMBS and non-agency MBS are carried at fair value and securitized mortgage loans and other investments are carried at amortized cost.

(2) Associated financing includes repurchase agreements, securitization financing issued to third parties and TALF financing.

(3) Equals net interest income after provision for loan losses for each of the captions.

(4) Includes \$24.2 million in cash maintained by the Company to support investments financed with repurchase agreement borrowings.

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The Agency MBS in the table above consists principally of Hybrid ARMs and ARMs with a weighted average 18 months until their next reset. Approximately \$383.4 million of the MBS were issued and are guaranteed by Fannie Mae, and approximately \$175.5 million of the MBS were issued and are guaranteed by Freddie Mac. The weighted average coupon on Agency MBS at March 31, 2010 was 4.63% and we owned these MBS at an average amortized cost to par of 102.3%. The Agency MBS are financed with \$490.8 million in repurchase agreement financing with a weighted average original term to maturity of 60 days.

Securitized single-family mortgage loans consist of loans originated by us on average in 1994. The loans have an unpaid principal balance of \$59.9 million at March 31, 2010, of which \$19.4 million have pool insurance which limits our credit risk on such loans. Approximately 88% of the loans have interest rates which reset at least annually based on an index, and the weighted average coupon on the loans was 5.11% at March 31, 2010. The loans are geographically dispersed with 44% of the loans in California, 11% in New York, 5% in Florida and no other state with more than 6%. The current loan-to-value relative to the original appraised value of the underlying real estate at the time of origination is 50% on a weighted-average basis. Excluding loans with pool insurance, approximately \$2.3 million of the loans were 60+ days delinquent at March 31, 2010, but only \$0.7 million of the loans did not make a payment in the last 90 days. We had recorded an allowance for loan losses of \$0.3 million on these loans at March 31, 2010. Securitized single-family mortgage loans are financed with \$23.5 million in securitization financing and \$22.6 million in repurchase agreement financing with an original term to maturity of 32 days.

Securitized commercial mortgage loans were originated principally in 1997 and had a total unpaid principal balance of \$148.9 million at March 31, 2010. These loans consisted of \$100.6 million in multifamily loans, mixed commercial mortgage loans with an unpaid principal balance of \$20.7 million, and approximately \$27.4 million of the loans which have been fully-defeased by the borrower with cash. Of the multifamily loans, \$54.4 million have a limited guaranty made by SunAmerica Inc and its parent, American International Group, requiring SunAmerica to reimburse the issuing securitization trust for the first \$5.8 million in losses on these loans should any of the loans default. Alternatively, SunAmerica has the right to purchase a defaulted loan from the securitization trust with no yield maintenance. SunAmerica exercised this right to purchase one defaulted commercial mortgage loans with an aggregate unpaid principal balance of \$3.1 million during the quarter ended March 31, 2010. We recognized a gain of \$0.6 million on the repurchase by SunAmerica. At March 31, 2010, nine commercial mortgage loans with unpaid principal balances of \$18.2 million were 60+ days delinquent (excluding SunAmerica loans) and we had provided an allowance for loan losses of \$4.1 million relative to these delinquent loans. Substantially all of the loans in the trust have amortization terms of 25 or 30 years, with a balloon maturity. Approximately \$16 million of the pool reaches its maturity date in 2012 and approximately \$45 million and \$43 million, respectively, of the pool reaches its maturity in 2014 and 2015. The current loan-to-value of the entire pool of loans (excluding the defeased loans) relative to original appraised value is 46%. Securitized commercial mortgage loans are financed with fixed rate, non-recourse securitization financing.

CMBS consists of \$179.5 million in AAA -rated CMBS and \$4.1 million in unrated CMBS. All of the CMBS are fixed rate securities and are financed with \$80.1 million in repurchase agreement financing (which is floating rate) and \$50.8 million in TALF funding (which is fixed rate). Approximately \$122.0 million of the CMBS were issued by us in 1998. The remaining CMBS were issued in 2004 and 2005 by unrelated third parties.

In order to hedge our exposure to rising interest rates related to our use of repurchase agreements for financing certain of its investments, we have entered into \$180 million in pay-fixed interest rate swaps with a remaining term of approximately 31 months.

Recent Developments

On April 27, 2010, we announced our results for the first quarter of 2010. During the first quarter, we earned \$0.30 per diluted common share, and we reported a book value per common share of \$9.40 at March 31, 2010 versus \$9.08 at December 31, 2009. During the first quarter of 2010, we purchased \$60.8 million 2004-2005 vintage AAA -rated CMBS and financed such purchase with \$50.8 million under the

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TALF program. The TALF financing is non-recourse, has a three-year term and a weighted average rate of 2.73%. The estimated leveraged return on our invested capital on these CMBS is approximately 14%.

In February 2010, Fannie Mae and Freddie Mac announced their intentions to purchase delinquent loans that are 120 days or more past due from Agency MBS pools. Freddie Mac bought out all such loans in February 2010 and Fannie Mae indicated that it would purchase loans between March and June 2010 (impacting prepayments in April through July). The constant prepayment rate, or CPR, for our Agency MBS portfolio for the first three months of 2010 inclusive of the Freddie Mac purchase was 28.6%, compared to 17.8% for the fourth quarter of 2009. During the first quarter of 2010, we amortized \$1.3 million in premium on our Agency MBS versus \$0.7 million in the fourth quarter of 2009. The weighted average yield on our Agency MBS during the first quarter of 2010 was 3.72%.

On January 1, 2010, we adopted Accounting Standards Update (ASU) No. 2009-16 and ASU No. 2009-17, which amended ASC Topic 860 and ASC Topic 810, respectively. The purpose of the amendment to ASC Topic 860 is to eliminate the concept of a qualifying special-purpose entity (QSPE) and to require more information about transfers of financial assets, including securitization transactions as well as a company s continuing exposure to the risks related to transferred financial assets. The purpose of the amendment to ASC Topic 810 is to change how a reporting entity determines when to consolidate another entity that is insufficiently capitalized or is not controlled by voting rights. As a result of the adoption of ASU Nos. 2009-16 and 2009-17, we consolidated one QSPE effective January 1, 2010. Our investments increased by approximately \$15 million as a result of the consolidation of this QSPE with a corresponding \$15 million increase in its securitization financing. The adoption of these standards did not have a material impact on our results of operations.

During the first quarter of 2010, we issued 1,070,100 additional shares under our continuous offering program, resulting in proceeds of \$9.5 million, net of commissions.

On March 17, 2010, we declared a first quarter of 2010 dividend of \$0.23 per common share and \$0.2375 per share for our Series D preferred stock, both payable on April 30, 2010.

Federal Income Tax Consequences of our Status as a REIT Recent Developments

The below information adds to and updates, and should be read together with, the information in the accompanying prospectus under the caption Federal Income Tax Consequences of Our Status as a REIT.

Revenue Procedure 2010-12

The Internal Revenue Service has recently issued Revenue Procedure 2010-12. Under this Revenue Procedure, a stock dividend paid by a REIT that is declared on or before December 31, 2012 with respect to a taxable year ending on or before December 31, 2011 may be treated as a taxable dividend if each stockholder has an option to elect to receive his or her dividend in cash, even if the aggregate cash amount paid to all stockholders is limited, as long as the cash portion represents at least 10% of the total dividend payment to be made to all stockholders and certain other requirements are satisfied. Accordingly, if we pay a stock dividend with a cash election feature in accordance with this Revenue Procedure, your tax liability with respect to such dividend may be significantly greater than the amount of cash you receive.

The Housing and Economic Recovery Tax Act of 2008

The Housing and Economic Recovery Tax Act of 2008 (the 2008 Act) was recently enacted into law. The 2008 Act s sections that affect the REIT provisions of the Code are generally effective for taxable years beginning after its date of enactment, and, for us, will generally mean that the new provisions apply from and after January 1, 2009, except as otherwise indicated below. Among others, the 2008 Act made the following changes to, or clarifications of, the REIT provisions of the Code that could be relevant for us:

Taxable REIT Subsidiaries. The limit on the value of taxable REIT subsidiaries securities held by a REIT has been increased from 20 percent to 25 percent of the total value of a REIT s assets.

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See Federal Income Tax Consequences of Our Status as a REIT Asset Tests in the accompanying prospectus.

Hedging Income. Income from a hedging transaction entered into after July 30, 2008 that complies with identification procedures set out in Treasury regulations and hedges indebtedness incurred or to be incurred by us to acquire or carry real estate assets will not constitute gross income for purposes of either the 75% or 95% gross income tests. See Federal Income Tax Consequences of Our Status as a REIT Gross Income Tests Hedging Transactions in the accompanying prospectus.

Reclassification Authority. The Secretary of the Treasury is given broad authority to determine whether particular items of gain or income recognized after July 30, 2008 qualify or not under the 75% and 95% gross income tests, or are to be excluded from the measure of gross income for such purposes. See Federal Income Tax Consequences of Our Status as a REIT Gross Income Tests in the accompanying prospectus.

Prohibited Transactions Safe Harbor and Foreign Currency Transactions. The 2008 Act also expanded the prohibited transactions safe harbor and addressed the treatment of certain transactions involving foreign currency for purposes of the REIT asset and income tests.

General Information

Our common stock and Series D Preferred Stock are listed on the New York Stock Exchange under the symbols DX and DX PrD, respectively. We maintain a website at www.dynexcapital.com. Information contained on our website is not, and should not be interpreted to be, part of this prospectus supplement or the accompanying prospectus.

The Offering

Issuer	Dynex Capital, Inc.
Common stock offered by us	5,000,000 shares
Common stock to be outstanding after this offering	20,168,742 shares ⁽¹⁾
NYSE symbol	DX
Use of proceeds	We intend to use the net proceeds from this offering to acquire additional investments, consistent with our investment policy, and for general corporate purposes, that may include, among other things, repayment of maturing obligations, capital expenditures and working capital.
Risk factors	Investing in our common stock involves various risks. Risks associated with an investment in our common stock are described under the heading Risk Factors beginning on page 7 of our Annual Report on Form 10-K for the year ended December 31, 2009 and beginning on page S-11 below.
Listing	Our common stock is listed on the New York Stock Exchange, under the symbol DX .

(1)

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The number of shares of our common stock outstanding immediately after the closing of this offering is based on 15,168,742 shares of our common stock outstanding as of June 23, 2010.

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RISK FACTORS

*An investment in our common stock involves various risks, including those described below and the risks set forth under the caption **Risk Factors** included in our Annual Report on Form 10-K for the year ended December 31, 2009. You should carefully consider these risk factors, together with all of the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus, in determining whether to purchase our common stock. If any of these risks occur, our business, operating results, prospects and financial condition could be harmed. This could cause the market price of our common stock to decline and could cause you to lose all or part of your investment.*

Risks Related to our Common Stock

The market price and trading volume of our common stock may be volatile.

The market price of our common stock may become highly volatile and subject to wide fluctuations. In addition, trading volume in our common stock may fluctuate and cause significant price variations to occur. Some of the factors that could result in fluctuations in the price or trading volume of our common stock include, among other things: actual or anticipated changes in our current or future financial performance, changes in market interest rates and general market and economic conditions. We cannot assure you that the market price of our common stock will not fluctuate or decline significantly.

We have not established a minimum dividend payment level for our common stockholders and there are no assurances of our ability to pay dividends to them in the future.

We have not established a minimum dividend payment level for our common stockholders. Given our tax NOL carryforwards, we are able to maintain our REIT status even if we do not distribute 90% of our REIT taxable income. Our ability to pay dividends may be harmed by the risk factors described herein and in our Annual Report on Form 10-K for the year ended December 31, 2009. In addition, we may decide to use our NOL carryforward to offset all or a portion of our REIT dividend requirement. All distributions to our common stockholders will be made at the discretion of our board of directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our board of directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future.

Future offerings of debt securities, which would rank senior to our common stock upon our liquidation, and future offerings of equity securities, which would dilute our existing stockholders and may be senior to our common stock for the purposes of dividend and liquidating distributions, may adversely affect the market price of our common stock.

In the future, we may attempt to increase our capital resources by making offerings of debt or additional offerings of equity securities, including commercial paper, medium-term notes, senior or subordinated notes and classes of preferred stock or common stock. Upon liquidation, holders of our debt securities and lenders with respect to our other borrowings will receive a distribution of our available assets prior to the holders of our common stock. In addition, upon liquidation, holders of shares of our preferred stock will receive a distribution of our available assets prior to the holders of our common stock. Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. Moreover, our Series D Preferred Stock has, and any future issuance of preferred stock by us may have, a preference on liquidating distributions and on dividend payments that could limit our ability to make a dividend distribution to the holders of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings.

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Thus, holders of our common stock bear the risk of our future offerings reducing the market price of our common stock and diluting their stock holdings in us.

Future sales of our common stock could have an adverse effect on our stock price.

We cannot predict the effect, if any, of future sales of common stock, or the availability of shares for future sales, on the market price of our common stock. For example, upon conversion of our Series D Preferred Stock, we are required to issue shares of our common stock to holders of our Series D Preferred Stock, which increases the number of shares available for sale and dilutes existing holders of our common stock. Sales of substantial amounts of common stock, or the perception that such sales could occur, may adversely affect prevailing market prices for our common stock.

We may not be able to use the money we raise to acquire investments at favorable prices.

We intend to seek to raise additional capital from time to time if we determine that it is in our best interests and the best interests of our shareholders, including through public offerings of our stock. The net proceeds of any offering could represent a significant increase in our equity. Depending on the amount of leverage that we use, the full investment of the net proceeds of any offering might result in a substantial increase in our total assets. There can be no assurance that we will be able to invest all of such additional funds in mortgage-related assets at favorable prices. We may not be able to acquire enough mortgage-related assets to become fully invested after an offering, or we may have to pay more for MBS than we have historically. In either case, the return that we earn on stockholders' equity may be reduced.

SELECTED FINANCIAL DATA

The selected financial data set forth below is derived from our unaudited financial statements for the three months ended March 31, 2010 and 2009 and from our audited financial statements for the years ended December 31, 2009, 2008 and 2007. Our unaudited interim financial results, in the opinion of management, reflect all adjustments (consisting solely of normal recurring adjustments) which are necessary to present fairly the results of our operations for the unaudited interim periods. Our unaudited interim results for the three months ended March 31, 2010, are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2010. The following selected financial data should be read in conjunction with the more detailed information contained in our financial statements and the notes thereto and the information under Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, which is incorporated by reference in to the accompanying prospectus.

	Year Ended December 31,			Three Months Ended March 31,	
	2007	2008	2009	2009	2010
	(\$ in thousands, except per share data)			(unaudited)	
Statement of Operations Data:					
Net interest income	\$ 10,683	\$ 10,547	\$ 24,565	\$ 5,044	\$ 7,197
Net interest income after provision for or recapture of loan losses	11,964	9,556	23,783	4,865	6,788
Equity in income (loss) of joint venture	709	(5,733)	2,400	(754)	
Gain (loss) on sale of investments, net	755	2,316	171	83	77
Fair value adjustments, net		7,147	205	645	82
Other (expense) income	(533)	7,467	(2,262)	21	669
General and administrative expenses	(3,996)	(5,632)	(6,716)	(1,726)	(2,079)
Net income	\$ 8,899	\$ 15,121	\$ 17,581	\$ 3,134	\$ 5,537

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	Year Ended December 31,			Three Months Ended March 31,	
	2007	2008	2009	2009	2010
	(\$ in thousands, except per share data)			(unaudited)	
Net income to common shareholders	\$ 4,889	\$ 11,111	\$ 13,571	\$ 2,131	\$ 4,534
Net income per common share:					
Basic	\$ 0.40	\$ 0.91	\$ 1.04	\$ 0.18	\$ 0.32
Diluted	\$ 0.40	\$ 0.91	\$ 1.02	\$ 0.18	\$ 0.30
Dividends declared per share:					
Common	\$	\$ 0.71	\$ 0.92	\$ 0.23	\$ 0.23
Series D Preferred	\$ 0.95	\$ 0.95	\$ 0.95	\$ 0.2375	\$ 0.2375

	As of December 31,			March 31,
	2007	2008	2009	2010
	(\$ in thousands, except share data)			(unaudited)
Balance Sheet Data:				
Investments	\$ 331,795	\$ 572,255	\$ 917,981	\$ 954,437
Total assets	374,758	607,191	958,062	994,458
Repurchase agreements	4,612	274,217	638,329	602,451
Non-recourse collateralized financing	203,199	177,157	143,081	201,506
Total liabilities	232,822	466,782	789,039	810,814
Shareholders' equity	141,936	140,409	168,753	183,644
Common shares outstanding	12,136,262	12,169,762	13,931,512	15,037,802
Book value per common share	\$ 8.22	\$ 8.07	\$ 9.08	\$ 9.40

USE OF PROCEEDS

We intend to use any net proceeds from this offering to acquire additional investments consistent with our investment policy, and for general corporate purposes that may include, among other things, repayment of maturing obligations, capital expenditures and working capital.

PLAN OF DISTRIBUTION

Upon written instructions from us, JMP Securities LLC will use its commercially reasonable efforts consistent with its sales and trading practices to solicit offers to purchase shares of our common stock under the terms and subject to the conditions set forth in the sales agreement. JMP Securities LLC's solicitation will continue until we instruct JMP Securities LLC to suspend the solicitations and offers. We will instruct JMP Securities LLC as to the amount of common stock to be sold by JMP Securities LLC. We may instruct JMP Securities LLC not to sell common stock if the sales cannot be effected at or above the price designated by us in any instruction. We or JMP Securities LLC may suspend the offering of common stock upon proper notice and subject to other conditions.

JMP Securities LLC will provide written confirmation to us no later than the opening of the trading day on the New York Stock Exchange following the trading day in which shares of our common stock are sold under the sales agreement. Each confirmation will include the number of shares sold on the preceding day, the prices at which such shares were sold, the gross proceeds received from such sales, the net proceeds to us and the compensation payable by us to JMP Securities LLC in connection with the sales.

We will pay JMP Securities LLC commissions for its services in acting as agent in the sale of common stock. JMP Securities LLC will be entitled to compensation of up to 2.0% of the gross sales price.

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per share of common stock sold under the sales agreement. We estimate that the total expenses for the offering, excluding compensation payable to JMP Securities LLC under the terms of the sales agreement, will be approximately \$125,000.

Settlement for sales of common stock will occur on the third business day following the date on which any sales are made, or on some other date that is agreed upon by us and JMP Securities LLC in connection with a particular transaction, in return for payment of the net proceeds to us.

In connection with the sale of the common stock on our behalf, JMP Securities LLC may, and will with respect to sales effected in an at the market offering, be deemed to be an underwriter within the meaning of the Securities Act, and the compensation of JMP Securities LLC may be deemed to be underwriting commissions or discounts. We have agreed to provide indemnification and contribution to JMP Securities LLC against certain civil liabilities, including liabilities under the Securities Act. We have also agreed to reimburse JMP Securities LLC for other specified expenses.

The offering of shares of our common stock pursuant to the sales agreement will terminate upon the earlier of (1) the sale of all common stock subject to the agreement, whether by JMP Securities LLC or any other agent pursuant to an at the market offering, or (2) termination of the sales agreement. We may terminate the sales agreement at any time in our sole discretion by giving notice to JMP Securities LLC. JMP Securities LLC may also terminate the sales agreement at any time in its sole discretion by giving notice to us.

In no event will the maximum compensation to be received by any FINRA member in connection with this offering exceed 8.0%.

JMP Securities LLC and its affiliates may in the future provide various investment banking, commercial banking and other financial services for us and our affiliates, for which services they may in the future receive customary fees. To the extent required by Regulation M, JMP Securities will not engage in any market making activities involving our common stock while the offering is ongoing under this prospectus supplement.

LEGAL MATTERS

The validity of the securities offered pursuant to this prospectus supplement will be passed upon for us by Troutman Sanders LLP, Virginia Beach, Virginia. Certain legal matters in connection with this offering will be passed upon for JMP Securities LLC by DLA Piper LLP (US), New York, New York.

EXPERTS

The financial statements as of December 31, 2009 and 2008 and for each of the three years in the period ended December 31, 2009 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2009 incorporated by reference in this prospectus have been so incorporated in reliance on the reports of BDO Seidman, LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of said firm as experts in auditing and accounting.

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PROSPECTUS

\$1,000,000,000

DYNEX CAPITAL, INC.

COMMON STOCK

PREFERRED STOCK

DEBT SECURITIES

WARRANTS

Dynex Capital, Inc. intends to offer and sell from time to time the debt and equity securities described in this prospectus. The total offering price of the securities described in this prospectus will not exceed \$1,000,000,000 in the aggregate.

We will provide the specific terms of any securities we may offer in a supplement to this prospectus. You should carefully read this prospectus and any applicable prospectus supplement before deciding to invest in these securities.

Our common stock is listed on the New York Stock Exchange under the symbol DX. We may make any sales of our common shares under this prospectus, if any, on or through the facilities of the New York Stock Exchange, to or through a market maker, or to or through an electronic communications network, at market prices prevailing at the time of sale, or in any other manner permitted by law (including, without limitation, privately negotiated transactions). On April 9, 2008, the last reported sale price of our common stock as reported was \$9.13 per share.

The securities may be offered directly, through agents designated by us from time to time, or through underwriters or dealers.

Our principal executive offices are located at 4551 Cox Road, Suite 300, Glen Allen, Virginia 23060. Our telephone number is (804) 217-5800.

Investing in our securities involves risks. See Risk Factors beginning on page 1 of this prospectus for information regarding risks associated with an investment in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is April 17, 2008.

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You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. An offer to sell these securities will not be made in any jurisdiction where the offer and sale is not permitted. You should assume that the information appearing in this prospectus, as well as information we have previously filed with the Securities and Exchange Commission (the SEC) and incorporated by reference, is accurate as of the date on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

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ABOUT THIS PROSPECTUS

This prospectus is part of a shelf registration statement. We may sell, from time to time, in one or more offerings, any combinations of the securities described in this prospectus. This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities under this prospectus, we will provide a prospectus supplement that contains specific information about the terms of the securities. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading **Where You Can Find More Information**.

The total dollar amount of the securities sold under this prospectus will not exceed \$1,000,000,000.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other documents with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the **Exchange Act**). You may read and copy any materials that we file with the SEC without charge at the public reference room of the Securities and Exchange Commission, 100 F Street, N.W., Room 1580, Washington, DC 20549. Information about the operation of the public reference room may be obtained by calling the Securities and Exchange Commission at 1-800-SEC-0330. Also, the SEC maintains an internet website that contains reports, proxy and information statements, and other information regarding issuers, including Dynex Capital, Inc., that file electronically with the SEC. The public may obtain any documents that we file with the SEC at www.sec.gov.

We also make available free of charge on or through our internet website (www.dynexcapital.com) our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission. This prospectus does not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our company and our securities, reference is made to the registration statement, including the exhibits and schedules to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by reference to the exhibit to which the reference relates.

INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to **incorporate by reference** the information we file with it, which means that we can disclose important information to you by referring you to other documents that we file with the SEC. These incorporated documents contain important business and financial information about us that is not included in or delivered with this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information filed with the SEC will update and supersede this information.

We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, until the offering of securities covered by this prospectus is complete:

Annual Report on Form 10-K for the period ended December 31, 2007, filed on February 27, 2008;

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Current Reports on Form 8-K, filed February 8 and April 1, 2008 and amended Current Report on Form 8-K/A, filed April 4, 2008;
and

The description of our capital stock included in our Registration Statement on Form 8-A, filed pursuant to Section 12(b) of the Exchange Act on January 17, 1989, including any amendment or report filed for the purpose of updating that description.

You may obtain copies of these documents at no cost by writing or telephoning us at the following address:

Investor Relations

Dynex Capital, Inc.

4551 Cox Road, Suite 300

Glen Allen, VA 23060

(804) 217-5800

FORWARD-LOOKING STATEMENTS

Certain written statements we make in this prospectus that are not historical fact constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act. All statements contained in this prospectus addressing the results of operations, our operating performance, events, or developments that we expect or anticipate will occur in the future, including statements relating to investment strategies, net interest income growth, earnings or earnings per share growth, and market share, as well as statements expressing optimism or pessimism about future operating results, are forward-looking statements. The forward-looking statements are based upon management's views and assumptions as of the date of this prospectus regarding future events and operating performance and are applicable only as of the dates of such statements. Such forward-looking statements may involve factors that could cause our actual results to differ materially from historical results or from any results expressed or implied by such forward-looking statements. We caution readers not to place undue reliance on forward-looking statements, which may be based on assumptions and anticipated events that do not materialize.

Factors that may cause actual results to differ from historical results or from any results expressed or implied by forward-looking statements are disclosed in our reports on Forms 10-K, 10-Q and 8-K incorporated by reference herein and in prospectus supplements and other offering materials.

See Risk Factors below for a further discussion of the risks of an investment in our securities.

Table of Contents**OUR COMPANY**

We were incorporated in Virginia on December 18, 1987 and commenced operations in February 1988. We and our subsidiaries are a specialty finance company organized as a mortgage real estate investment trust (REIT). We invest principally in single-family residential and commercial mortgage loans and securities, both investment grade rated and non-investment grade rated. Residential mortgage securities are typically referred to as RMBS and commercial mortgage securities are typically referred to as CMBS. We finance loans and RMBS and CMBS securities through a combination of non-recourse securitization financing, repurchase agreements, and equity. We employ financing in order to increase the overall yield on our invested capital. Our primary source of income is net interest income, which is the excess of the interest income earned on our investments over the cost of financing these investments. We may occasionally record gains or losses from the sale of investments prior to their maturity.

We and our qualified REIT subsidiaries have elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended (the Code), and intend to continue to do so. As a result of this election, we and our qualified REIT subsidiaries are not taxed at the corporate level on taxable income distributed to stockholders, provided that certain REIT qualification tests are met. Certain of our affiliates, which may be consolidated with us for financial reporting purposes, may not be consolidated for federal income tax purposes because such entities may elect taxable REIT subsidiary tax status. All taxable income of any such taxable REIT subsidiaries would be subject to federal and state income taxes, where applicable, to the extent that such taxable income could not be offset by tax net operating loss carryforwards available to the taxable REIT subsidiary.

Our principal executive offices are located at 4551 Cox Road, Suite 300, Glen Allen, VA 23060. Our telephone number is (804) 217-5800. Our website is <http://www.dynexcapital.com>. The contents of our website are not a part of this prospectus. Our shares of common stock are traded on the New York Stock Exchange, or the NYSE, under the symbol DX.

RISK FACTORS

An investment in our securities involves various risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K and the other information contained in this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of our securities.

USE OF PROCEEDS

Unless otherwise indicated in a prospectus supplement, we expect to use the net proceeds from the sale of these securities for general corporate purposes.

RATIO OF EARNINGS TO COMBINED FIXED CHARGES**AND PREFERRED STOCK DIVIDENDS**

The following table sets forth the historical ratios of income from continuing operations (before fixed charges) to combined fixed charges and our preferred stock dividends for the periods indicated:

<i>(Amounts in thousands, except ratios)</i>	Year Ended December 31,				
	2007	2006	2005	2004	2003
Ratio of earnings to combined fixed charges and preferred stock dividends	1.22x	1.04x	1.06x		
Deficiency of earnings to combined fixed charges and preferred stock dividends				\$ 8,944	\$ 26,583

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DESCRIPTION OF OUR CAPITAL STOCK

The following is a description of the material terms of our capital stock. Because it is only a summary, it does not contain all of the information that may be important to you. For a complete description, please refer to the Virginia Stock Corporation Act and our articles of incorporation and bylaws. See [Where You Can Find More Information](#).

General

Our articles of incorporation currently authorize a total of 150,000,000 shares of capital stock, consisting of 100,000,000 shares of common stock, \$0.01 par value per share and 50,000,000 shares of Preferred Stock, \$0.01 par value per share, of which 5,713,430 shares are designated as Series D Preferred Stock.

As of April 9, 2008, we had issued and outstanding 12,169,762 shares of common stock and 4,221,539 shares of Series D Preferred Stock. Under the Virginia Stock Corporation Act, stockholders generally are not liable for the corporation's debts or obligations.

Restrictions on Ownership and Transfer

Our articles of incorporation provide that if our board of directors determines in good faith that the direct or indirect ownership of our stock has or may become concentrated to an extent that would cause us to fail to qualify or be qualified as a REIT under sections 856(a)(5) or (6) of the Code, or similar provisions of successor statutes, we may redeem or repurchase any number of shares of common stock and/or preferred stock sufficient to maintain or bring such ownership into conformity with the Code and may refuse to transfer or issue shares of common stock and/or preferred stock to any person whose acquisition would result in our being unable to conform with the requirements of the Code. In general, Code sections 856(a)(5) and (6) provide that, as a REIT, we must have at least 100 beneficial owners for 335 days of each taxable year and that we cannot qualify as a REIT if, at any time during the last half of our taxable year, more than 50% in value of our outstanding stock is owned, directly or indirectly, by or for five or fewer individuals. In addition, our articles of incorporation provide that we may redeem or refuse to transfer any shares of our capital stock to the extent necessary to prevent the imposition of a penalty tax as a result of ownership of those shares by certain disqualified organizations, including governmental bodies and tax-exempt entities that are not subject to tax on unrelated business taxable income. The redemption or purchase price for those shares shall be equal to the fair market value of those shares as reflected in the closing sales price for those shares if then listed on a national securities exchange, or the average of the closing sales prices for those shares if then listed on more than one national securities exchange, or if those shares are not then listed on a national securities exchange, the latest bid quotation for the shares if then traded over-the-counter on the last business day for which closing prices are available immediately preceding the day on which notices of such acquisitions are sent or, if no such closing sales prices or quotations are available, then the net asset value of those shares as determined by our board of directors in accordance with the provisions of applicable law.

All certificates representing shares of our common stock or preferred stock will refer to the restrictions described above.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and preferred stock is AST Stock Transfer and Trust Company.

DESCRIPTION OF OUR COMMON STOCK

The following description of our common stock sets forth certain general terms and provisions of our common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion or exchange of our debt securities or preferred stock or upon the exercise of warrants to purchase our common stock.

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All shares of our common stock covered by this prospectus will be duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, holders of shares of our common stock are entitled to receive dividends on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock.

Subject to the provisions of our articles of incorporation regarding the restrictions on transfer of stock, each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, except as provided with respect to any other class or series of stock, such as our Series D Preferred Stock, the holders of such shares will possess the exclusive voting power. There is no cumulative voting in the election of our board of directors, which means that other than with respect to the directors that the holders of a Series D Preferred Stock are entitled to elect, the holders of a plurality of the outstanding shares of our common stock can elect all of the directors then standing for election and the holders of the remaining shares will not be able to elect any directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, shares of our common stock will have equal dividend, liquidation and other rights.

Under the Virginia Stock Corporation Act, a Virginia corporation generally cannot dissolve, amend its articles of incorporation, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of more than two-thirds of all votes entitled to be cast on the matter, unless a greater or lesser proportion of votes (but not less than a majority of all votes cast) is specified in the articles of incorporation. Our articles of incorporation provide that, except as otherwise required or authorized by the Virginia Stock Corporation Act or our articles of incorporation, the vote required to approve an amendment or restatement of the articles of incorporation shall be a majority of all votes entitled to be cast by each voting group entitled to vote on the amendment, other than in the case of an amendment or restatement that amends or affects: (i) the shareholder vote required by the Virginia Stock Corporation Act to approve a merger, share exchange, sale of all or substantially all of the corporation's assets or the dissolution of the corporation, or (ii) the provisions addressing the ownership of excess shares in the articles of incorporation. Our articles of incorporation provide that if any shares of Series D Preferred Stock remain outstanding, in addition to any other vote or consent of stockholders required by law or our articles of incorporation, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of the Series D Preferred Stock will be required to (i) approve an amendment, alteration or repeal of any provisions of the articles of incorporation or bylaws that materially adversely affects the voting powers, rights or preferences of the holders of Series D Preferred Stock or (ii) authorizes or creates or increases an authorized amount of, any shares of any class or any security convertible into shares of any class ranking prior or senior to the Series D Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of our company or in the payment of dividends.

DESCRIPTION OF OUR PREFERRED STOCK

The prospectus supplement relating to any series of preferred stock offered by that supplement will describe the specific terms of those securities, including:

the title and stated value of that preferred stock;

the number of shares of that preferred stock offered, the liquidation preference per share and the offering price of that preferred stock;

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the dividend rate(s), period(s) and payment date(s) or method(s) of calculation thereof applicable to that preferred stock;

whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends on that preferred stock will accumulate;

the voting rights applicable to that preferred stock;

the procedures for any auction and remarketing, if any, for that preferred stock;

the provisions for a sinking fund, if any, for that preferred stock;

the provisions for redemption including any restriction thereon, if applicable, of that preferred stock;

any listing of that preferred stock on any securities exchange;

the terms and conditions, if applicable, upon which that preferred stock will be convertible into shares of our common stock, including the conversion price (or manner of calculation of the conversion price) and conversion period;

a discussion of federal income tax considerations applicable to that preferred stock;

any limitations on issuance of any series of preferred stock ranking senior to or on a parity with that series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

in addition to those limitations described above under **Description of Our Capital Stock** **Restrictions on Ownership and Transfer**, any other limitations on actual and constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and

any other specific terms, preferences, rights, limitations or restrictions of that preferred stock.

Rank Within Our Capital Structure

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our affairs rank:

senior to all classes or series of common stock and to all equity securities ranking junior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs;

on a parity with all equity securities issued by us the terms of which specifically provide that those equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs; and

junior to all equity securities issued by us the terms of which specifically provide that those equity securities rank senior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of our affairs.

The term "equity securities" does not include convertible debt securities.

Dividends

Subject to the preferential rights of any other class or series of stock and to the provisions of the articles of incorporation regarding the restrictions on transfer of stock, holders of shares of our preferred stock will be entitled to receive dividends on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us, at rates and on dates as will be set forth in the applicable prospectus supplement.

Dividends on any series or class of our preferred stock may be cumulative or noncumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set

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forth in the applicable prospectus supplement. If our board of directors fails to authorize a dividend payable on a dividend payment date on any series or class of preferred stock for which dividends are noncumulative, then the holders of that series or class of preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on such series or class are declared or paid for any future period.

If any shares of preferred stock of any series or class are outstanding, no dividends may be authorized or paid or set apart for payment on the preferred stock of any other series or class ranking, as to dividends, on a parity with or junior to the preferred stock of that series or class for any period unless:

the series or class of preferred stock has a cumulative dividend, and full cumulative dividends have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for payment on the preferred stock of that series or class for all past dividend periods and the then current dividend period; or

the series or class of preferred stock does not have a cumulative dividend, and full dividends for the then current dividend period have been or contemporaneously are authorized and paid or authorized and a sum sufficient for the payment of those dividends is set apart for the payment on the preferred stock of that series or class.

When dividends are not paid in full (or a sum sufficient for the full payment is not set apart) upon the shares of preferred stock of any series or class and the shares of any other series or class of preferred stock ranking on a parity as to dividends with the preferred stock of that series or class, then all dividends authorized on shares of preferred stock of that series or class and any other series or class of preferred stock ranking on a parity as to dividends with that preferred stock shall be authorized pro rata so that the amount of dividends authorized per share on the preferred stock of that series or class and other series or class of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on the shares of preferred stock of that series or class (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend) and that other series or class of preferred stock bear to each other. No interest, or sum of money in lieu of interest, will be payable in respect of any dividend payment or payments on preferred stock of that series or class that may be in arrears.

Redemption

We may have the right or may be required to redeem one or more series of preferred stock, in whole or in part, in each case upon the terms, if any, and at the time and at the redemption prices set forth in the applicable prospectus supplement.

If a series of preferred stock is subject to mandatory redemption, we will specify in the applicable prospectus supplement the number of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid dividends, except in the case of noncumulative preferred stock. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series or class is payable only from the net proceeds of the issuance of our stock, the terms of that preferred stock may provide that, if no such stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, that preferred stock shall automatically and mandatorily be converted into shares of our applicable stock pursuant to conversion provisions specified in the applicable prospectus supplement.

Liquidation Preference

Upon any voluntary or involuntary liquidation or dissolution of us or winding up of our affairs, then before any distribution or payment will be made to the holders of common stock or any other series or class of stock

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ranking junior to any series or class of the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of our affairs, the holders of that series or class of preferred stock will be entitled to receive out of our assets legally available for distribution to shareholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid on the preferred stock (which will not include any accumulation in respect of unpaid dividends for prior dividend periods if the preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets.

If, upon any voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of any series or class of preferred stock and the corresponding amounts payable on all shares of other classes or series of our stock of ranking on a parity with that series or class of preferred stock in the distribution of assets upon liquidation, dissolution or winding up, then the holders of that series or class of preferred stock and all other classes or series of capital stock will share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions have been made in full to all holders of any series or class of preferred stock, our remaining assets will be distributed among the holders of any other classes or series of stock ranking junior to that series or class of preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For these purposes, the consolidation or merger of us with or into any other entity, or the sale, lease, transfer or conveyance of all or substantially all of our property or business, will not be deemed to constitute a liquidation, dissolution or winding up of our affairs.

Voting Rights

Holders of preferred stock will not have any voting rights, except as set forth below or as indicated in the applicable prospectus supplement.

Unless provided otherwise for any series or class of preferred stock, so long as any shares of preferred stock of a series or class remain outstanding, we will not, without the affirmative vote or consent of the holders of at least a majority of the shares of that series or class of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series or class voting separately as a class):

authorize or create, or increase the authorized or issued amount of, any class or series of stock ranking prior to that series or class of preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized stock into any of those shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any of those shares; or

amend, alter or repeal the provisions of our articles of incorporation for such series or class of preferred stock, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of that series or class of preferred stock or the holders of the preferred stock.

However, any increase in the amount of the authorized preferred stock or the creation or issuance of any other series or class of preferred stock, or any increase in the amount of authorized shares of such series or class or any other series or class of preferred stock, in each case ranking on a parity with or junior to the preferred stock of that series or class with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, will not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

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These voting provisions will not apply if, at or prior to the time when the act with respect to which that vote would otherwise be required will be effected, all outstanding shares of that series or class of preferred stock have been redeemed or called for redemption upon proper notice and sufficient funds have been deposited in trust to effect that redemption.

Conversion Rights

The terms and conditions, if any, upon which shares of any series or class of preferred stock are convertible into shares of common stock will be set forth in the applicable prospectus supplement. The terms will include:

the number of shares of common stock into which the preferred stock is convertible;

the conversion price (or manner of calculation of the conversion price);

the conversion period;

provisions as to whether conversion will be at the option of the holders of the preferred stock or us;

the events requiring an adjustment of the conversion price; and

provisions affecting conversion in the event of the redemption of the preferred stock.

Series D Preferred Stock

Our board of directors has classified and designated 5,713,430 shares of Series D Preferred Stock, of which 4,221,539 shares are currently outstanding. The Series D Preferred Stock generally provides for the following rights, preferences and obligations.

Ranking

The Series D Preferred Stock ranks, relating to payments of dividends and distributions of assets upon liquidation, dissolution or winding-up:

senior to the common stock and to all of the stock that our board of directors may authorize in the future with terms that specifically provide that such stock ranks junior to the Series D Preferred Stock,

on a parity with all of the stock that our board of directors may authorize in the future with terms that specifically provide that such stock ranks on a parity with the Series D Preferred Stock, and

junior to all of the stock that our board of directors may authorize in the future with terms that specifically provide that such stock ranks senior to the Series D Preferred Stock.

Distributions

Each share of Series D Preferred Stock accrues dividends cumulatively payable at a 9.50% annual rate. The holders of Series D Preferred Stock are entitled to receive, when and as declared by our board of directors out of funds legally available for that purpose, cumulative dividends payable in cash in an amount per share equal to the greater of (i) the per quarter base rate of \$0.2375 or (ii) the per share quarterly dividend

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declared on the number of shares of common stock, or portion thereof, into which a share of Series D Preferred Stock is convertible, payable quarterly in arrears on the last day, or next succeeding business day, of January, April, July and October of each year. To the extent that these distributions are treated as dividends for federal income tax purposes, they may be used to satisfy our 90% REIT distribution requirement.

Liquidation

In the event of any liquidation, dissolution or winding up of our company, before any payment or distribution of our assets is made to or set apart for the holders of stock ranking junior to the Series D Preferred Stock, the holders of shares of Series D Preferred Stock will be entitled to receive \$10.00 per share of Series D

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Preferred Stock plus an amount equal to all dividends (whether or not earned or declared) accumulated, accrued and unpaid thereon to the date of final distribution to the holders; but the holders are not entitled to any further payment. Until the holders of the Series D Preferred Stock are paid the liquidation preference in full, plus an amount equal to all dividends (whether or not earned or declared) accumulated, accrued and unpaid thereon to the date of final distribution to such holders, no payment will be made to any holder of stock ranking junior to the Series D Preferred Stock upon the liquidation, dissolution or winding up of the corporation.

If the assets, or proceeds thereof, distributable among the holders of Series D Preferred Stock are insufficient to pay in full the preferential amount and liquidating payments, then such assets, or the proceeds thereof, will be distributed among the holders of Series D Preferred Stock ratably in the same proportion as the respective amounts that would be payable on such Series D Preferred Stock if all amounts payable thereon were paid in full. After payment has been made in full to the holders of Series D Preferred Stock, any other series or class of stock ranking junior to the Series D Preferred Stock will be entitled to receive any and all assets remaining to be paid or distributed.

Conversion

The Series D Preferred Stock is convertible by its holder, at such holder's option, at any time into one share of common stock for each share of Series D Preferred Stock. The Series D Preferred Stock converts automatically into a new series of senior notes bearing an annual interest rate of 9.50% whenever we fall into arrears in the payment of dividends for two quarterly dividend periods or fail to maintain consolidated shareholders equity equal to at least 200% of the aggregate issue price of the then outstanding Series D Preferred Stock. The articles of amendment that provide for the Series D Preferred Stock also provide that this new series of senior notes will be governed by an indenture that will be in a form and substance substantially similar to the indenture that governed our 9.50% Senior Notes (the balance of which were paid in full in 2007) and that satisfies the requirements of the Trust Indenture Act.

Redemption

We are able to redeem, at our option and in whole or in part, the shares of Series D Preferred Stock by either (i) issuing and delivering to each holder for each share of Series D Preferred Stock to be redeemed the number of shares of common stock calculated in accordance with a conversion ratio that will be initially set at one share of common stock for each share of Series D Preferred Stock; provided, however, that for 20 trading days within any period of 30 consecutive trading days, including the last trading day of the period, the current market price of the common stock on each of the 20 trading days equals or exceeds \$10.00, or (ii) paying out of funds legally available therefore a redemption price payable in cash equal to \$10.00 per share of Series D Preferred Stock (plus all accumulated, accrued and unpaid dividends) for each share of Series D Preferred Stock.

Restrictions on Transfer

Holders of Series D Preferred Stock are prohibited from transferring shares of Series D Preferred Stock where the transfer could or would result in our disqualification as a real estate investment trust under the Code, or could or would result in a person or persons acting as a group directly or indirectly owning in the aggregate more than 9.8% of the outstanding shares of our capital stock.

Voting Rights

The holders of Series D Preferred Stock have the right to vote separately to elect one director as long as any shares of Series D Preferred Stock remain outstanding and have the right to elect two directors so long as at least 50% of the originally issued shares of Series D Preferred Stock remain outstanding.

If any shares of Series D Preferred Stock remain outstanding, in addition to any other vote or consent of stockholders required by law or the articles of incorporation, as amended, the affirmative vote of at least 66 ²/₃%

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of the votes entitled to be cast by the holders of the Series D Preferred Stock will be required to (i) approve an amendment, alteration or repeal of any provisions of the articles of incorporation or bylaws that materially adversely affects the voting powers, rights or preferences of the holders of Series D Preferred Stock or (ii) authorizes or creates or increases an authorized amount of, any shares of any class or any security convertible into shares of any class ranking prior or senior to the Series D Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of our company or in the payment of dividends.

Preemptive Rights

The holders of Series D Preferred Stock have no preemptive rights.

DESCRIPTION OF OUR DEBT SECURITIES

The following description, together with the additional information we include in any applicable prospectus supplements, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. Although the terms we have summarized below will apply generally to any future debt securities we may offer, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. If we indicate in a prospectus supplement, the terms of any debt securities we offer under that prospectus supplement may differ from the terms we describe below.

The debt securities will be our direct unsecured general obligations and may include debentures, notes, bonds or other evidences of indebtedness. The debt securities will be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more separate indentures. Senior debt securities will be issued under a senior indenture, and subordinated debt securities will be issued under a subordinated indenture. We use the term *indentures* to refer to both the senior indenture and the subordinated indenture. The indentures will be qualified under the Trust Indenture Act. We use the term *trustee* to refer to either the senior trustee or the subordinated trustee, as applicable.

The following summaries of material provisions of the debt securities are subject to, and qualified in their entirety by reference to, all the provisions of the indenture applicable to a particular series of debt securities.

General

We will describe in each prospectus supplement the following terms relating to a series of debt securities:

the title;

any limit on the amount that may be issued;

whether or not we will issue the series of debt securities in global form, the terms and who the depository will be;

the maturity date;

the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

the terms of the subordination of any series of subordinated debt;

the place where payments will be payable;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

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the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional redemption provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities;

whether the indenture will restrict our ability to pay dividends, or will require us to maintain any asset ratios or reserves;

whether we will be restricted from incurring any additional indebtedness;

a discussion on any material or special United States federal income tax considerations applicable to the debt securities;

the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities.

Conversion or Exchange Rights

We will set forth in the prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for shares of common stock or other securities of ours. We will include provisions as to whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of common stock or other securities of ours that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

The indentures will not contain any covenant that restricts our ability to