

DYNEX CAPITAL INC
Form 10-Q
August 09, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended June 30, 2010

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 1-9819

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

Virginia
(State or other jurisdiction of
incorporation or organization)

52-1549373
(I.R.S. Employer
Identification No.)

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

23060-9245
(Zip Code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer,

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or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated
filer Accelerated filer
 (Do not check if a smaller reporting
Non-accelerated filercompany) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes No

On August 5, 2010, the registrant had 18,168,742 shares outstanding of common stock, \$0.01 par value, which is the registrant’s only class of common stock.

DYNEX CAPITAL, INC.
FORM 10-Q

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

DYNEX CAPITAL, INC.
CONSOLIDATED BALANCE SHEETS
(amounts in thousands except share data)

	June 30, 2010 (unaudited)	December 31, 2009
ASSETS		
Agency MBS (including pledged of \$519,511 and \$575,386, respectively)	\$ 568,966	\$ 594,120
Non-Agency securities (including pledged of \$168,660 and \$82,770, respectively)	179,996	109,110
Securitized mortgage loans, net	192,666	212,471
Other investments, net	1,597	2,280
	943,225	917,981
Cash and cash equivalents	30,279	30,173
Derivative assets	–	1,008
Accrued interest receivable	5,043	4,583
Other assets, net	4,891	4,317
Total assets	\$ 983,438	\$ 958,062
LIABILITIES AND SHAREHOLDERS' EQUITY		
Liabilities:		
Repurchase agreements	\$ 590,925	\$ 638,329
Non-recourse collateralized financing	191,929	143,081
Derivative liabilities	2,835	–
Accrued interest payable	1,145	1,208
Other liabilities	5,773	6,691
	792,607	789,309
Commitments and Contingencies (Note 13)		
Shareholders' equity:		
Preferred stock, par value \$.01 per share, 50,000,000 shares authorized; 9.5% Cumulative Convertible Series D, 4,221,539 shares issued and outstanding (\$43,218 aggregate liquidation preference)	41,749	41,749
Common stock, par value \$.01 per share, 100,000,000 shares authorized; 15,168,742 and 13,931,512 shares issued and outstanding, respectively	152	139
Additional paid-in capital	390,544	379,717

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Accumulated other comprehensive income	17,436	10,061
Accumulated deficit	(259,050)	(262,913)
	190,831	168,753
Total liabilities and shareholders' equity	\$ 983,438	\$ 958,062

See condensed notes to unaudited consolidated financial statements.

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DYNEX CAPITAL, INC.
CONSOLIDATED STATEMENTS OF INCOME
(UNAUDITED)

(amounts in thousands except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Interest income:				
Agency MBS	\$4,610	\$5,096	\$9,478	\$9,531
Non-Agency securities	3,741	156	6,241	315
Securitized mortgage loans	3,355	4,485	6,978	9,306
Other investments	32	78	64	135
Cash and cash equivalents	2	4	5	9
	11,740	9,819	22,766	19,296
Interest expense:				
Repurchase agreements	1,362	829	2,625	1,893
Non-recourse collateralized financing	2,446	2,711	5,013	5,686
Other interest expense	-	398	-	792
	3,808	3,938	7,638	8,371
Net interest income	7,932	5,881	15,128	10,925
Provision for loan losses	(150)	(139)	(559)	(318)
Net interest income after provision for loan losses	7,782	5,742	14,569	10,607
Gain on sale of investments, net	716	138	794	221
Fair value adjustments, net	71	(507)	153	138
Other income, net	555	143	1,224	164
Equity in income (loss) of joint venture, net	-	610	-	(144)
General and administrative expenses:				
Compensation and benefits	(870)	(1,069)	(1,842)	(1,953)
Other general and administrative expenses	(987)	(687)	(2,094)	(1,530)
Net income	7,267	4,370	12,804	7,503
Preferred stock dividends	(1,003)	(1,003)	(2,005)	(2,005)
Net income to common shareholders	\$6,264	\$3,367	\$10,799	\$5,498
Weighted average common shares:				
Basic	15,122	12,988	14,668	12,581
Diluted	19,347	17,210	18,893	12,581
Net income per common share:				
Basic	\$0.41	\$0.26	\$0.74	\$0.44
Diluted	\$0.38	\$0.25	\$0.68	\$0.44
Dividends declared per common share	\$0.23	\$0.23	\$0.46	\$0.46

See condensed notes to unaudited consolidated financial statements.

DYNEX CAPITAL, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(UNAUDITED)
(amounts in thousands)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2010	2009	2010	2009
Net income	\$7,267	\$4,370	\$12,804	\$7,503
Other comprehensive income:				
Available-for-sale securities:				
Change in market value	6,674	3,878	11,987	7,431
Reclassification adjustment for net gain on sale of investments	(702)	(138)	(779)	(221)
Reclassification adjustment for equity in the joint venture's other-than-temporary impairment	-	-	-	707
Net unrealized loss on cash flow hedging instruments	(2,648)	-	(3,833)	-
Other comprehensive income	3,324	3,740	7,375	7,917
Comprehensive income	10,591	8,110	20,179	15,420
Dividends declared on preferred stock	(1,003)	(1,003)	(2,005)	(2,005)
Comprehensive income to common shareholders	\$9,588	\$7,107	\$18,174	\$13,415

See condensed notes to unaudited consolidated financial statements.

DYNEX CAPITAL, INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(UNAUDITED)
(amounts in thousands)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Other Compre- hensive Income	Accumulated Deficit	Total
Balance as of December 31, 2009	\$41,749	\$139	\$379,717	\$ 10,061	\$ (262,913)	\$168,753
Common stock issuance	–	13	10,846	–	–	10,859
Restricted stock vesting	–	–	(19)	–	–	(19)
Cumulative effect of adoption of new accounting principle	–	–	–	–	12	12
Net income	–	–	–	–	12,804	12,804
Dividends on preferred stock	–	–	–	–	(2,005)	(2,005)
Dividends on common stock	–	–	–	–	(6,948)	(6,948)
Other comprehensive income	–	–	–	7,375	–	7,375
Balance as of June 30, 2010	\$41,749	\$152	\$390,544	\$ 17,436	\$ (259,050)	\$190,831

See condensed notes to unaudited consolidated financial statements.

DYNEX CAPITAL, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(amounts in thousands)

	Six Months Ended June 30,		
	2010	2009	
Operating activities:			
Net income	\$12,804	\$7,503	
Adjustments to reconcile net income to cash provided by operating activities:			
Increase in accrued interest receivable	(460)	(918)	
Decrease in accrued interest payable	(63)	(521)	
Provision for loan losses	559	318	
Gain on sale of investments, net	(794)	(221)	
Fair value adjustments, net	(153)	(138)	
Equity in loss of joint venture, net	-	144	
Amortization and depreciation	3,197	1,093	
Stock based compensation expense	163	351	
Net change in other assets and other liabilities	(2,245)	(1,364)	
Net cash and cash equivalents provided by operating activities	13,008	6,247	
Investing activities:			
Purchase of investments	(219,279)	(237,475)	
Payments received on investments	145,274	49,536	
Proceeds from sales of investments	50,883	3,694	
Principal payments received on securitized mortgage loans	19,443	10,431	
Other investing activities	856	(1,540)	
Net cash and cash equivalents used in investing activities	(2,823)	(175,354)	
Financing activities:			
(Repayment of) borrowings under repurchase agreements, net	(47,404)	198,314	
Non-recourse collateralized financing	50,678	-	
Principal payments on non-recourse collateralized financing	(15,544)	(7,880)	
Redemption of securitization financing	-	(15,492)	
Decrease in restricted cash	22,000	(3) 14,000 (3)	
All other fees	--	--	--
Total audit and non-audit fees	\$117,420	\$100,000	\$154,000

(1) Includes fees for professional services rendered for the audit of our annual financial statements and review of our Annual Report on Form 10-K for the year 2008, 2007 and 2006 and for reviews of the financial statements included in our quarterly reports on Form 10-Q for the first three quarters of fiscal 2008, 2007 and 2006 and related U.S. Securities and Exchange Commission registration statements.

(2) Includes fees billed for professional services rendered in fiscal 2008, 2007 and 2006, in connection with acquisition planning and due diligence.

- (3) Includes fees billed for professional services rendered in fiscal 2008, 2007 and 2006, in connection with tax compliance (including U.S. federal and state returns) and tax consulting.

Financial Information Systems Design and Implementation Fees

During fiscal year 2008, Hein & Associates LLP did not bill any fees for the professional services described in paragraph (c)(4)(ii) of Rule 2-01 of Regulation S-X.

All Other Fees

During fiscal year 2008, there were no other fees billed for services rendered by Hein & Associates LLP other than the services described above.

The Board of Directors has considered whether the provision of the services covered in this section is compatible with maintaining Hein & Associates LLP's independence and believes that it is.

Required Vote

Ratification of the appointment of the independent registered public accounting firm requires the affirmative vote of a plurality of the votes cast by the holders of the shares of common stock voting in person or by proxy at the Annual Meeting. If the shareholders should not ratify the appointment of Hein & Associates LLP, the Board will reconsider the appointment.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE SHAREHOLDERS VOTE FOR THE RATIFICATION OF THE APPOINTMENT OF HEIN & ASSOCIATES LLP AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE YEAR ENDING DECEMBER 31, 2009.

PROPOSAL 3: OTHER BUSINESS

The Board of Directors of the Company is not aware of any other matters that are to be presented at the Annual Meeting, and it has not been advised that any other person will present any other matters for consideration at the meeting. Nevertheless, if other matters should properly come before the Annual Meeting, the shareholders present, or the persons, if any, authorized by a valid proxy to vote on their behalf, shall vote on such matters in accordance with their judgment.

RESOLUTIONS PROPOSED BY INDIVIDUAL SHAREHOLDERS;
DISCRETIONARY AUTHORITY TO VOTE PROXIES

In order to be considered for inclusion in the proxy statement and form of proxy relating to our next annual meeting of shareholders following the end of our 2009 fiscal year, proposals by individual shareholders must be received by us no later than August 18, 2010.

In addition, the proxy solicited by the Board of Directors for the next annual meeting of shareholders will confer discretionary authority on any shareholder proposal presented at that meeting unless we are provided with notice of that proposal no later than September 30, 2010.

AVAILABILITY OF REPORTS ON FORM 10-K

A copy of the Annual Report on Form 10-K for the fiscal year ended December 31, 2008 is being sent to each shareholder with this Proxy Statement. Upon written request, we will provide, without charge, a copy of our 2008 Form 10-K or other SEC filings to any shareholder of record, or to any shareholder who owns Common Stock listed in the name of a bank or broker as nominee, at the close of business on November 24, 2009. Any request for a copy of our 2008 Form 10-K or other SEC filings should be mailed to ARC Wireless Solutions, Inc., 10601 West 48th Avenue, I-70 Frontage Road North, Wheat Ridge, Colorado 80033-2660, Attention: Investor Relations.

FORWARD-LOOKING STATEMENTS

This proxy statement and materials delivered with this proxy statement include “forward-looking” statements. All statements other than statements of historical facts included in this proxy statement and materials delivered with this proxy statement, including without limitation statements regarding our financial position, business strategy, and plans and objectives of management for future operations and capital expenditures, are forward-looking statements. Although we believe that the expectations reflected in the forward-looking statements and the assumptions upon which the forward-looking statements are based are reasonable, we can give no assurance that such expectations and assumptions will prove to have been correct. Additional statements concerning important factors that could cause actual results to differ materially from our expectations (“Cautionary Statements”) are disclosed in the “Forward-Looking Statements- Cautionary Statements” section of our Annual Report on Form 10-K for the year ended December 31, 2008. All written and oral forward-looking statements attributable to us or persons acting on our behalf subsequent to the date of this proxy statement are expressly qualified in their entirety by the Cautionary Statements.

This notice and proxy statement are sent by order of the Board of Directors.

Dated: November 24, 2009
Chief Executive Officer

Jason T. Young

* * * * *

APPENDIX A

ARC WIRELESS SOLUTIONS, INC.
POLICIES AND PROCEDURES FOR NOMINATIONS
OF DIRECTOR CANDIDATES

Effective January 1, 2009

I. All Nominations

It is the policy of the Board of Directors (the "Board") of ARC Wireless Solutions, Inc. (the "Corporation") that each candidate recommended for nomination and election to the Board (each, a "Nominee"), regardless of whether such Nominee is recommended by a shareholder of the Corporation, the Board or any other person, shall be approved by a majority of the independent directors of the Board.

The Board believes that certain minimum qualifications must be met by each Nominee for the Board, as well as meeting the applicable independence standards required by the Securities Exchange Commission (the "SEC") and federal securities laws. The Board believes that Nominees must reflect a Board that is comprised of directors (i) a majority of whom are independent (as determined under the aforementioned SEC director qualification standards); (ii) who are of high integrity; (iii) who have qualifications that will increase the overall effectiveness of the Board; and (iv) who meet other requirements as may be required by applicable rules, such as financial literacy or financial expertise with respect to audit Board members. In evaluating the qualifications of the Nominees, the Board considers many factors, including issues of leadership ability, career success, character, judgment, independence, background, age, expertise, diversity and breadth of experience, length of service, other commitments and the like. The Board evaluates such factors, among others, and does not assign any particular weight or priority to any of these factors. Also, the Board considers the suitability of each Nominee, including the current members of the Board, in light of the current size and composition of the Board.

Unless and until otherwise subsequently determined by the Board, the number of directors of the Corporation at any time shall be the number of directors that the Board nominated for election at the most recently-held annual meeting of shareholders, increased by the number of directors, if any, that the Board appointed subsequent to the most recently-held annual meeting of shareholders and also increased by the number of directors, if any, whose term as a director did not expire at the most recently-held annual meeting of shareholders.

II. Shareholder Nominations

The Board shall consider recommendations for Nominees to the Board from shareholders (an "Eligible Shareholder") holding a minimum of \$2,000 in market value, or 1%, of the Corporation's voting common stock, which stock is held through the date of the meeting electing directors, and which Eligible Shareholder complies with the nomination notice procedures set forth in these policies and the Corporation's Bylaws.

Nominees recommended by Eligible Shareholders (hereinafter referred to as "Shareholder Candidates") will be evaluated by the Board on the same basis as Nominees that may be identified by the Board, management or, if the Board permits, a search firm. Such evaluation may, in the Board's discretion, include a review solely of information and documentation provided to the Board or may also include discussions with persons familiar with the Shareholder Candidate, an interview with the Shareholder Candidate or other actions that the Board deems proper. In evaluating and identifying Nominees, the Board has the authority to retain and terminate any third party search firm that is used to identify director Nominees and has the authority to approve the fees and retention terms of any such search firm.

Shareholder Candidates who are recommended by an Eligible Shareholder at a time when there are no open positions on the Board and are considered qualified Nominees by the Board may be placed on the rolling list of Nominees for open Board positions maintained by the Board, generally for a period of up to 24 months from the date that the recommendation was received by the Secretary of the Corporation.

III. Procedures for Shareholders Regarding Nomination of Director Candidates

For the Shareholder Candidate to be considered by the Board, regardless of whether the Eligible Shareholder (i) is seeking to have the Shareholder Candidate included in the Corporation's proxy statement, (ii) intends to prepare and distribute its own proxy statement, or (iii) intends to nominate the Shareholder Candidate at a meeting, the Eligible Shareholder and the Shareholder Candidate must comply with the procedures set forth herein.

A. Recommendations for Shareholder Candidate(s) to the Board of Directors from an Eligible Shareholder must be directed in writing to ARC Wireless Solutions, Inc., Attn: Corporate Secretary, at the Corporation's principal offices at 10601 West 48th Avenue, I-70 Frontage Road North, Wheat Ridge, Colorado 80033-2660. Each such recommendation from an Eligible Shareholder shall include and set forth the following information regarding the Shareholder Candidate whom the Eligible Shareholder proposes to nominate for election as a director:

1. the name, age, business address and residence address of such Shareholder Candidate;
2. the principal occupation or employment of the Shareholder Candidate;
3. the class and number of shares of the Corporation's securities beneficially owned by such Shareholder Candidate, if any;
4. detailed biographical data and qualifications and information regarding any relationships between the Shareholder Candidate and the Corporation within the last three years;
5. a statement signed by the Shareholder Candidate acknowledging that:
 - (a) the Shareholder Candidate consents to being named in the Corporation's proxy materials, and, if elected, will serve as a director of the Corporation and will represent all shareholders of the Corporation in accordance with applicable laws and the Corporation's articles of incorporation and by-laws, as may be amended from time to time; and
 - (b) the Shareholder Candidate, if elected, will comply with the Corporation's Amended and Restated Code of Ethics, any corporate governance guidelines, and any other applicable rule, regulation, policy or standard of conduct applicable to the Board of Directors and its individual members.

6. a fully completed and signed Questionnaire for Directors and Officers on the Corporation's standard form and provide any additional information requested by the Board or the Corporation, including any information that would be required to be included in a proxy statement in which the Shareholder Candidate is named as a nominee for election as a director and information showing that the Shareholder Candidate meets the Board's qualifications for nomination as a director and for service on the Committees of the Board; and
7. any other information relating to such Shareholder Candidate required to be disclosed in solicitations for proxies for election of directors pursuant to Regulation 14A under the Securities and Exchange Act of 1934, as amended (the "1934 Act"), and the rules thereunder.

B. The Eligible Shareholder submitting the recommendation must provide:

1. the name and record address of the Eligible Shareholder and the class and number of shares of the Corporation's securities beneficially owned by the Eligible Shareholder;
2. any material interest of the Eligible Shareholder in such nomination;
3. a description of all arrangements or understandings between the Eligible Shareholder making such nomination and the Shareholder Candidate and any other person or persons (naming such person or persons) pursuant to which the nomination is made by the Eligible Shareholder;
4. a statement from the recommending Eligible Shareholder in support of the Shareholder Candidate and providing references for the Shareholder Candidate;
5. a representation that such Eligible Shareholder intends to appear in person or by proxy at the annual meeting to nominate the Shareholder Candidate named in its recommendation; and
6. any other information that is required to be provided by the shareholder pursuant to Regulation 14A under the 1934 Act, in his/her capacity as a proponent to a shareholder proposal.

In addition to the required information detailed above, a Shareholder Candidate must be available for interviews with members of the Board.

IV. Timing of Shareholder Candidate Recommendations

An Eligible Shareholder who wishes to recommend a Shareholder Candidate for election as a director, regardless of whether the Eligible Shareholder (i) is seeking to have the Shareholder Candidate included in the Corporation's proxy statement, (ii) intends to prepare and distribute its own proxy statement, or (iii) intends to nominate the Shareholder Candidate at a meeting, must submit the information and documentation described above for receipt by the Secretary of the Corporation in a timely manner, with "timely" determined as set forth in the next succeeding sentence herein. To be timely, an Eligible Shareholder's notice must be received at the Corporation's principal office not less than 120 calendar days before the date that the Corporation's proxy statement or notice thereof was first mailed to shareholders in connection with the previous year's annual meeting; provided, however, that in the event (i) the Corporation did not hold an annual meeting in the previous year, (ii) the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, or (iii) the meeting is a special meeting called in the manner set forth in the Corporation's bylaws, then notice by the Eligible Shareholder, to be timely, must be delivered to the Corporation not later than the 10th day following the day on which a Public Announcement (defined in Article II Section 5 of the bylaws) of the date of such meeting is first made. The Secretary of the Corporation will provide a copy of the Bylaws and/or the Policies and Procedures for Shareholder Nominations of Director Candidates upon a request in writing from the Eligible Shareholder.

V. Decisions by the Independent Directors

The majority of the independent directors shall have final authority on determining the selection of director Nominees for nomination to the Board.

VI. Modification of Policies and Procedures

The policies and procedures set forth herein may be modified at any time as may be determined by the Board and a majority of the independent directors.

