

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 29, 2024

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

**Virginia**  
(State or other jurisdiction of incorporation)  
**4991 Lake Brook Drive, Suite 100**  
**Glen Allen, Virginia**  
(Address of principal executive offices)

**001-09819**  
(Commission File Number)

**52-1549373**  
(IRS Employer Identification No.)

**23060-9245**  
(Zip Code)

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

**Not Applicable**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	DX	New York Stock Exchange
6.900% Series C Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRC	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

On October 29, 2024, Dynex Capital, Inc. (the “Company”), entered into amendment no. 5 (“Amendment No. 5”) to the distribution agreement, dated June 29, 2018, as amended on May 31, 2019, August 3, 2021, June 3, 2022 and February 10, 2023 (the “Agreement” and, as amended by Amendment No. 5, the “Amended Agreement”), by and among the Company, on the one hand, and BTIG, LLC, Citizens JMP Securities, LLC, Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., JonesTrading Institutional Services LLC, J.P. Morgan Securities LLC, RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC (collectively the “Sales Agents” and each individually a “Sales Agent”), on the other hand, pursuant to which shares of the Company’s common stock, par value \$0.01 per share (“Common Stock”), may be offered and sold through the Agents in transactions that are deemed to be “at the market offerings” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended.

Amendment No. 5 increases the number of shares of Common Stock available for sale under the Agreement by 33,235,621 shares to 69,353,243 shares, 35,468,000 shares of which remain available for issuance (the “Shares”), and adds Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC as Sales Agents to the Amended Agreement.

The Shares will be issued pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-281180). The Company filed a prospectus supplement, dated October 29, 2024, to the prospectus, dated October 25, 2024, with the Securities and Exchange Commission in connection with the offer and sale of the Shares from time to time pursuant to the Amended Agreement.

The Sales Agents and their affiliates have provided, and may in the future provide, investment banking, brokerage and other services to the Company in the ordinary course of business, and the Company paid, and expects to pay, customary fees and commissions for their services, respectively.

The foregoing summary does not purport to be a complete description of the Amended Agreement and is qualified in its entirety by reference to the full text of Amendment No. 5, which is attached as Exhibit 10.1 hereto and incorporated by reference herein.

In connection with the filing of Amendment No. 5, the Company is filing as Exhibit 5.1 hereto an opinion of its counsel, Mayer Brown LLP, with respect to the legality of the shares.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits**

Exhibit No.	Description of Exhibit
5.1	<a href="#">Opinion of Mayer Brown LLP with respect to the legality of common stock.</a>
10.1	<a href="#">Amendment No. 5, dated October 29, 2024, to the Distribution Agreement, dated June 29, 2018, as amended on May 31, 2019, August 3, 2021, June 3, 2022, and February 10, 2023, by and among Dynex Capital, Inc., BTIG, LLC, Citizens JMP Securities, LLC, Janney Montgomery Scott LLC, Keefe, Bruyette &amp; Woods, Inc., JonesTrading Institutional Services LLC, J.P. Morgan LLC, RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC.</a>
23.1	Consent of Mayer Brown LLP (included in <a href="#">Exhibit 5.1</a> ).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DYNEX CAPITAL, INC.**

Date: October 29, 2024

By: /s/ Robert S. Colligan

Robert S. Colligan

Executive Vice President, Chief Financial Officer and Chief Operating Officer  
(Principal Financial Officer)



Mayer Brown LLP  
1221 Avenue of the Americas  
New York, New York 10020-1001

Main Tel (212) 506-2500  
Main Fax (212) 262-1910  
www.mayerbrown.com

October 29, 2024

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

Re: Dynex Capital, Inc.—Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Dynex Capital, Inc., a Virginia corporation (the “Company”), in connection with the issuance and sale by the Company from time to time of up to 35,468,000 shares of the Company’s common stock, par value \$0.01 per share (the “Shares”), pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-281180) (as amended, the “Registration Statement”), filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), the prospectus, dated October 25, 2024 (the “Base Prospectus”) and the prospectus supplement, dated October 29, 2024 (the “Prospectus Supplement”), filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act. The Base Prospectus and Prospectus Supplement are collectively referred to as the “Prospectus.” The Shares are to be sold by the Company in the manner described in the Registration Statement and the Prospectus.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of: (i) the Amended and Restated Articles of Incorporation of the Company, as amended through the date hereof; (ii) the Amended and Restated Bylaws of the Company, as amended through the date hereof; (iii) certain resolutions of the board of directors of the Company, relating to the issuance and sale of the Shares; (iv) the Registration Statement; (v) the Prospectus; and (vi) an executed copy of the Distribution Agreement, dated as of June 29, 2018, as amended on May 31, 2019, August 3, 2021, June 3, 2022, February 10, 2023, and October 29, 2024, by and among the Company and J.P. Morgan Securities LLC, Citizens JMP Securities, LLC, JonesTrading Institutional Services LLC, BTIG, LLC, Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC. In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of certain other corporate records, documents, instruments and certificates of public officials and of the Company, and we

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have made such inquiries of officers of the Company and public officials and considered such questions of law as we have deemed necessary for purposes of rendering the opinions set forth herein.

In connection with this opinion, we have assumed the genuineness of all signatures and the authenticity of all items submitted to us as originals and the conformity with originals of all items submitted to us as copies. In making our examination of documents executed by parties other than the Company, we have assumed that each other party has the power and authority to execute and deliver, and to perform and observe the provisions of, such documents and has duly authorized, executed and delivered such documents, and that such documents constitute the legal, valid and binding obligations of each such party. We also have assumed the integrity and completeness of the minute books of the Company presented to us for examination. With respect to certain factual matters, we have relied upon certificates of officers of the Company.

Based upon, subject to and limited by the foregoing, we are of the opinion that the Shares have been duly and validly authorized and, when and if issued and delivered against payment therefor in the manner contemplated by the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

We do not express any opinion herein concerning any law other than the laws of the Commonwealth of Virginia and the federal laws of the United States of America, as in effect on the date hereof.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Company's Current Report on Form 8-K to be filed with the Commission on or about October 29, 2024, which will be incorporated by reference in the Registration Statement, and to the reference to us in the Prospectus. In giving such consent, we do not hereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the Commission thereunder.

Very truly yours,

/s/ MAYER BROWN LLP

MAYER BROWN LLP

**DYNEX CAPITAL, INC.**  
**AMENDMENT NO. 5 TO**  
**DISTRIBUTION AGREEMENT**

October 29, 2024

BTIG, LLC  
 65 East 55<sup>th</sup> Street  
 New York, NY 10022

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

Janney Montgomery Scott LLC  
 1717 Arch Street  
 Philadelphia, PA 19103

Keefe, Bruyette & Woods, Inc.  
 787 Seventh Avenue  
 New York, NY 10019

JonesTrading Institutional Services LLC  
 325 Hudson St., 6<sup>th</sup> Floor  
 New York, NY 10013

J.P. Morgan Securities LLC  
 383 Madison Avenue  
 New York, NY 10179

RBC Capital Markets, LLC  
 200 Vesey Street  
 Three World Financial Center, 8th Floor  
 New York, NY 10281

UBS Securities LLC  
 1285 Avenue of the Americas  
 New York, NY 10019

Wells Fargo Securities, LLC  
 500 West 33<sup>rd</sup> Street, 12<sup>th</sup> Floor  
 New York, NY 10001

Ladies and Gentlemen:

Reference is made to the Distribution Agreement, dated June 29, 2018, as amended on May 31, 2019, August 3, 2021, June 3, 2022 and February 10, 2023 (the “**Distribution Agreement**”), by and among Dynex Capital, Inc., a Virginia corporation (the “**Company**”), J.P. Morgan Securities LLC, Citizens JMP Securities, LLC, JonesTrading Institutional Services LLC and BTIG, LLC (collectively, the “**Original Agents**”), pursuant to which the Company agreed, in its sole discretion, to issue and sell, from time to time, through the Agents, as agent and/or principal, up to 36,117,622 shares of common stock, par value \$0.01 per share, of the Company. The Original Agents, together with Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC are herein referred to as the “**Agents**.” All capitalized terms used in this Amendment No. 5 to Distribution Agreement (this “**Amendment**”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Distribution Agreement. The Company and the Agents hereby agree to amend the Distribution Agreement as set forth in this Amendment as follows:

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

1. The definition of the term “registration statement” shall be deemed to mean the registration statement on Form S-3 (File No. 333-281180).
2. The definition of the term “Base Prospectus” shall be deemed to mean the prospectus dated October 25, 2024, filed as part of the Registration Statement, including the documents incorporated by reference therein as of the date of such prospectus.
3. The definitions of the terms “Agent” and “Agents” in the first sentence of the Distribution Agreement and Exhibit D to the Distribution Agreement are hereby amended to read as follows:

“BTIG, LLC, Citizens JMP Securities, LLC, Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., JonesTrading Institutional Services LLC, J.P. Morgan Securities LLC, RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC (each an “**Agent**” and collectively, the “**Agents**”).”

4. The definition of “Maximum Number” in the first sentence of the Distribution Agreement is hereby amended to read as follows:  
“69,353,243 shares”.
5. Section 10 of the Distribution Agreement is deleted in its entirety and replaced with the following:

“Notices. All notices and other communications under this Agreement and any Terms Agreement shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of communication, and, if to the Agents, shall be sufficient in all respects if delivered or sent to (i) BTIG, LLC, 65 East 55th Street, New York, NY 10022, Email: tchandra@btig.com, Attention: Tosh Chandra; (ii) Citizens JMP Securities, LLC at 600 Montgomery Street, 11<sup>th</sup> Floor, San Francisco, California 94111, Attn: Aidan Whitehead (email: AWhitehead@jmpsecurities.com); (iii) Janney Montgomery Scott LLC, 1717 Arch Street, Philadelphia, Pennsylvania 19103, Attn: David Lau, Head of Equity Syndicate (dlau@janney.com), with a copy to capitalmarketscompliance@janney.com; (iv) Keefe, Bruyette & Woods, Inc., 787 Seventh Avenue, 5th Floor, New York, New York 10019, Attention: General Counsel, Email: NewYork7thAve-KBW-Legal@stifel.com; (v) JonesTrading Institutional Services LLC, 900 Island Park Drive, Suite 160, Daniel Island, South Carolina 29492, Email: Burke@jonestrading.com, Attention: Burke Cook; (vi) J.P. Morgan Securities LLC, 383 Madison Avenue, 6th Floor, New York, New York 10179, to the attention of Corporate Equity Derivatives Group, Sanjeet Dewal (sanjeet.s.dewal@jpmorgan.com) and Brett Chalmers (brett.chalmers@jpmorgan.com); (vii) RBC Capital Markets, LLC, 200 Vesey Street, 8th Floor, New York, New York 10281, Attention: Equity Syndicate, Facsimile: (212) 482-6260 with a copy to: TJ Opladen (email: tj.opladen@rbccm.com); (viii) Wells Fargo Securities, LLC,

500 West 33rd Street, New York, New York 10001, Attention: Equity Syndicate Department (fax no: (212) 214-5918); and (ix) UBS Securities LLC, 1285 Avenue of the Americas, New York, New York 10019, Attention: Equity Syndicate; and, if to the Company, shall be sufficient in all respects if delivered or sent to it at Dynex Capital, Inc., 4991 Lake Brook Drive, Suite 100, Glen Allen, Virginia 23060, Attn: Robert Colligan (email: rob.colligan@dynexcapital.com).

Notwithstanding the foregoing, Transaction Proposals shall be delivered by the Company to the Agents either by telephone (confirmed promptly by email) or email to the applicable Agent as follows: (i) Tosh Chandra, Managing Director (email: tchandra@btig.com), BTIGUSATMTrading@btig.com, BTIGcompliance@btig.com, Carrie Taylor (email: ctaylor@btig.com), Stephen Nociti (email: snociti@btig.com); (ii) Aidan Whitehead (telephone: (415) 263-1676, email: AWhitehead@jmpsecurities.com), Lee Weiner (telephone: (415) 263-1676, email: lweiner@jmpsecurities.com), Walter Conroy (email: wconroy@jmpsecurities.com), Gil Mogavero (email: gmogavero@jmpsecurities.com); (iii) David Lau (telephone: (617) 557-2971, email: dlau@janney.com), Brian Stauffer (telephone: (404) 601-7232, email: bstauffer@janney.com), Kipp Fawcett (telephone: (212) 230-2328, email: kfawcett@janney.com), Michael Millette (telephone: (617) 557-2986, email: mmillette@janney.com); (iv) Ted Conway (telephone: (212) 887-87757, email: conwayt@kbw.com), Emily Gilbert (telephone: (212) 877-8647, email: gilbertem@kbw.com), Jack Roehrig (telephone: (312) 423-8270, email: roehrigj@kbw.com), Victor Sack (telephone: (212) 887-8908, email: vsack@kbw.com), Andy Fenwick (telephone: (212) 887-4736, email: afenwick@kbw.com), Jim Crawley (telephone: (561) 982-2635, email: jcrawley@kbw.com), Scott Jaffe (telephone: (212) 887-8630, email: sjaffe@kbw.com), Martin Gorham (telephone: (212) 887-2093, email: gorhamm@stifel.com); (v) Bryan Turley, Managing Director (telephone: (212) 907-5333, email: bturley@jonestrading.com), Moe Cohen, Managing Director (telephone: (212) 907-5332, email: moec@jonestrading.com), Burke Cook, General Counsel (telephone: (212) 907-5396, email: burke@jonestrading.com); (vi) Jemil D. Salih (telephone: (212) 622-2723, email: jemil.d.salih@jpmorgan.com), Ara H. Movsesian (telephone: (212) 622-2619, email: ara.movsesian@jpmorgan.com); (vii) TJ Opladen (telephone: (212) 905-5846, email: tj.opladen@rbccm.com), JT Deignan (telephone: (646) 618-6607, email: jt.deignan@rbccm.com); (viii) Jesse G. O'Neill (telephone: (203) 719-8931, email: jesse.o-neill@ubs.com), Charles Heaney (telephone: (201) 352-6964, email: Charles.Heaney@ubs.com); and (ix) Philip Rech (telephone: (212) 214-6377, email: Philip.rech@wellsfargo.com); and Transaction Acceptances shall be delivered by the Agents to the Company by email to Byron L. Boston (byron.boston@dynexcapital.com), Smriti L. Popenoe (smriti.popenoe@dynexcapital.com), Robert S. Colligan (rob.colligan@dynexcapital.com), Jeffrey L. Childress (jeff.childress@dynexcapital.com), and Michael Sartori (mike.sartori@dynexcapital.com)."

6. The reference to "second Exchange Business Day" in Section 2(c) of the Distribution Agreement regarding the timing of settlement for sales of Shares



pursuant to the Distribution Agreement is hereby amended and replaced with “first Exchange Business Day.”

7. Schedule A of the Distribution Agreement is hereby replaced in full with the attachment to this Amendment.

- B. Obligations Binding upon Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC. Each of Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC hereby agrees to be bound by the terms of the Distribution Agreement. Each of Janney Montgomery Scott LLC, Keefe, Bruyette & Woods, Inc., RBC Capital Markets, LLC, UBS Securities LLC and Wells Fargo Securities, LLC shall be considered to be an Agent under the Distribution Agreement to the same extent as if it were a party to the Distribution Agreement on the date of the execution thereof.
- C. Supplement. The Company shall file a supplement to the Prospectus Supplement pursuant to Rule 424(b) of the Act reflecting the terms of this Amendment within two business days of the date hereof.
- D. No Other Amendments; References to Distribution Agreement. Except as set forth in Part A above, all the terms and provisions of the Distribution Agreement shall continue in full force and effect. All references to the Distribution Agreement in the Distribution Agreement or in any other document executed or delivered in connection therewith shall, from the date hereof, be deemed a reference to the Distribution Agreement as amended by this Amendment.
- E. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by facsimile or by electronic delivery of a portable document format (PDF) file (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., [www.docusign.com](http://www.docusign.com)).
- F. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

**[Remainder of page intentionally left blank.]**

If the foregoing correctly sets forth the understanding among the Company and each of the Agents, please so indicate in the space provided below for that purpose, whereupon this Amendment No. 5 to Distribution Agreement and your acceptance shall constitute a binding agreement among the Company and each of the Agents.

Very truly yours,

**DYNEX CAPITAL, INC.**

By: /s/ Robert S. Colligan

Name: Robert S. Colligan

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

*[Signature page to Amendment No. 5 to Distribution Agreement]*

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Accepted and agreed to as of the date first above written:

**BTIG, LLC**

By: /s/ Tosh Chandra

Name: Tosh Chandra

Title: Managing Director

*[Signature page to Amendment No. 5 to Distribution Agreement]*

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Accepted and agreed to as of the date first above written:

CITIZENS JMP SECURITIES, LLC

By: /s/ Jorge Solares-Parkhurst  
Name: Jorge Solares-Parkhurst  
Title: Managing Director

*[Signature page to Amendment No. 5 to Distribution Agreement]*

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Accepted and agreed to as of the date first above written:

JANNEY MONTGOMERY SCOTT LLC

By: /s/ David Lau  
Name: David Lau  
Title: Managing Director, Head of Equities

[Signature page to Amendment No. 5 to Distribution Agreement]

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Accepted and agreed to as of the date first above written:

KEEFE, BRUYETTE & WOODS, INC.

By: /s/ Edward B. Conway  
Name: Edward B. Conway  
Title: Managing Director

[Signature page to Amendment No. 5 to Distribution Agreement]

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Accepted and agreed to as of the date first above written:

JONESTRADING INSTITUTIONAL SERVICES LLC

By: /s/ Burke Cook  
Name: Burke Cook  
Title: General Counsel

[Signature page to Amendment No. 5 to Distribution Agreement]

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Accepted and agreed to as of the date first above written:

J.P. MORGAN SECURITIES LLC

By: /s/ Sanjeet Dewal  
Name: Sanjeet Dewal  
Title: Managing Director

*[Signature page to Amendment No. 5 to Distribution Agreement]*

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Accepted and agreed to as of the date first above written:

RBC CAPITAL MARKETS, LLC

By: /s/ Saurabh Monga  
Name: Saurabh Monga  
Title: Managing Director

[Signature page to Amendment No. 5 to Distribution Agreement]

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Accepted and agreed to as of the date first above written:

UBS SECURITIES LLC

By: /s/ Jesse O'Neill  
Name: Jesse O'Neill  
Title: Executive Director

UBS SECURITIES LLC

By: /s/ John Delgado-McCollum  
Name: John Delgado-McCollum  
Title: Director

[Signature page to Amendment No. 5 to Distribution Agreement]

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Accepted and agreed to as of the date first above written:

WELLS FARGO SECURITIES, LLC

By: /s/ Jaime Cohen  
Name: Jaime Cohen  
Title: Managing Director

[Signature page to Amendment No. 5 to Distribution Agreement]

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**Schedule A**

Authorized Company Representatives

Byron L. Boston,  
Co-Chief Executive Officer and Chairman

Smriti L. Popenoe  
Co-Chief Executive Officer, President and Chief Investment Officer

Robert S. Colligan  
Executive Vice President, Chief Financial Officer and Chief Operating Officer

Jeffrey L. Childress,  
Chief Accounting Officer

Michael Sartori,  
Director of Capital Markets and Financial, Planning and Analysis