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DYNEX CAPITAL INC

Form 10-K/A

April 29, 2004

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-K/A

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2003

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

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

1-9819
(Commission File Number)

Virginia
(State or other jurisdiction of
incorporation or organization)

52-1549373
(I.R.S. Employ
Identification N

4551 Cox Road, Suite 300, Glen Allen, Virginia
(Address of principal executive offices)

23060
(Zip Code)

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

Title of each class	Name of each exchange on which registered
Common Stock, \$.01 par value	New York Stock Exchange

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

Title of each class	Name of each exchange on
Series A 9.75% Cumulative Convertible Preferred Stock, \$.01 par value	NASDAQ National Market
Series B 9.55% Cumulative Convertible Preferred Stock, \$.01 par value	NASDAQ National Market
Series C 9.73% Cumulative Convertible Preferred Stock, \$.01 par value	NASDAQ National Market

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this

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Form 10-K. |_
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Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2).

Yes |_
No |X|

As of June 30, 2003, the aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$64,808,462 at a closing price on The New York Stock Exchange of \$5.96. Common stock outstanding as of February 29, 2004 was 10,873,903 shares.

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DYNEX CAPITAL, INC. 2003 FORM 10-K/A ANNUAL REPORT

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SIGNATURE

Item 10. Directors and Executive Officers of the Registrant

The following information sets forth as of December 31, 2003, the names, ages, principal occupations and business experience for our directors. Unless otherwise indicated, the business experience and principal occupations shown for each director has extended five or more years.

Thomas B. Akin (51), has been a director of Dynex Capital since May 2003, and Chairman since May 30, 2003. He also has served as the managing general partner of Talkot Capital, LLC located in Sausalito, California since 1995. Talkot Capital is the general partner for various limited partnerships investing in both private and public companies. From 1991 to 1994, Mr. Akin was the managing director of the Western United States for Merrill Lynch Institutional Services. Mr. Akin had been the regional director of the San Francisco and Los Angeles regions for Merrill Lynch Institutional Services from 1981 to 1991. Prior to Merrill Lynch, Mr. Akin was an employee of Salomon Brothers from 1978 to 1981. Mr. Akin is currently on the board of directors of Acacia Research Inc.*

* Mr. Akin is the managing general partner of Talkot Capital, LLC. During 1999, Talkot Capital and several other investors invested in Infotec Commercial Systems, Inc. ("Infotec"), a privately held company that provided training in computer technology to businesses throughout the United States. In 2001, Mr. Akin served as Chairman of the Board of Directors of Infotec, which filed for relief under Chapter VII of the United States Bankruptcy Code resulting in the liquidation of the company's assets. The investors of Infotec, including Talkot

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Capital, did not receive any return on capital.

J. Sidney Davenport (62), has been a director of Dynex Capital since its organization in December 1987. Mr. Davenport retired from The Ryland Group, Inc., a publicly-owned corporation engaged in residential housing construction and mortgage-related financial services, where he was a Vice President from March 1981 to January 1998. Mr. Davenport was Executive Vice President of Ryland Mortgage Company from April 1992 to January 1998. Mr. Davenport served as a director of Mentor Income Fund, Inc., a publicly traded closed-end mutual fund, from June 1992 to August 1993.

Thomas H. Potts (54), has been a director of Dynex Capital since its organization in December 1987. From 1987 to June 2002, Mr. Potts served as President of Dynex Capital. Prior to that, Mr. Potts served in various positions on behalf of The Ryland Group, Inc. and its affiliates. Mr. Potts also served as President and director of Mentor Income Fund, Inc. from its inception in December 1988 until June 1992. Mr. Potts is currently the Executive Vice President, People, Process and Strategy for IndyMac Bancorp, Inc. located in Pasadena, California.

Donald B. Vaden (68), has been a director of Dynex Capital since January 1988. He is the retired past Chairman of Residential Home Funding Corporation where he served from December 1992 until February 1995. In March 1995, Mr. Vaden resumed practicing law specializing in mediation and arbitration, and is certified for general and family mediation by the Supreme Court of Virginia.

Eric P. Von der Porten (46), has been a director of Dynex Capital since May 2002. Since 1997, Mr. Von der Porten has served as the managing member of Leeward Investments, LLC, the general partner of Leeward Capital, L.P. Mr. Von der Porten earned an A.B. from the University of Chicago and an M.B.A. from the Stanford Graduate School of Business.

Leon A. Felman (68), has been a director of Dynex Capital since November 2000. Mr. Felman has been a director of Allegiant Bancorp, Inc., a St. Louis, Missouri based bank holding company, since 1992 and a director of Allegiant Bank & Trust Company, Inc. since 2001. Mr. Felman also serves on the audit committee, the real estate committee and chairs both the nominating and corporate governance committee and the ethics committee of Allegiant Bancorp. From 1968 to 1999, Mr. Felman was the president and chief executive officer of Sage Systems, Inc., which operated twenty-eight Arby's restaurants in the St. Louis, Missouri metropolitan area. He also currently serves as the managing operating partner of Sage Systems Liquidating Trust, LLC and is the managing partner of Felman Family Partnership, LP. Mr. Felman has been a private investor in financial institutions since 1999. Mr. Felman graduated from Carnegie Institute of Technology with a B.S. in Industrial Administration.

Barry Igdaloff (49), has been a director of Dynex Capital since November 2000. Mr. Igdaloff has been a registered investment advisor and the sole proprietor of Rose Capital in Columbus, Ohio, since 1995. Mr. Igdaloff graduated from Indiana University in 1976 with a B.S.B. in Accounting and in 1978 graduated from Ohio State University with a J.D. in law. Mr. Igdaloff is a non-practicing certified public accountant and a non-practicing attorney.

Stephen J. Benedetti has served as Executive Vice President, Chief Financial Officer and Secretary since September 2001. From May 2000 to September 2001, Mr. Benedetti had been the Acting Chief Financial Officer and [Acting] Secretary. From October 1997 until August 2001, Mr. Benedetti served as Vice President and Treasurer of the Company; and from September 1994 until December 1998, he served as Vice President and Controller. From March 1992 until September 1994, he served as Director of Accounting and Financial Reporting for National Housing Partnerships, a national multifamily housing syndicator and

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property management concern. Mr. Benedetti also served as audit manager for Deloitte & Touche from 1985 to 1992, where he provided audit and consulting services to various clients primarily in the financial services and real estate development industries. Mr. Benedetti graduated from Virginia Tech in 1985 with a bachelor's degree in accounting and became a Certified Public Accountant in 1986.

Board of Directors Compensation

The independent directors receive an annual fee of \$25,000 per year, plus \$500 for each meeting of the Board of Directors, or committee thereof, they attend. In addition, these directors are reimbursed for expenses related to their attendance at Board of Directors and committee meetings.

Audit Committee Financial Expert

The Board of Directors also has determined that Mr. Barry Igdaloff qualifies as an audit committee financial expert as defined by regulations of the Securities and Exchange Commission.

Item 11. Executive Compensation

MANAGEMENT OF THE COMPANY

The executive officer of the Company and his position is as follows:

Name ----	Age ---	Position(s) Held -----
Stephen J. Benedetti	41	Executive Vice President, Chief Financial Officer and Secretary

The executive officer serves at the discretion of the Company's Board of Directors. Biographical information regarding Mr. Benedetti is set forth below:

Executive Compensation

The Summary Compensation Table below includes individual compensation information on the President and the other most highly compensated executive officer whose salary and bonus exceeded \$100,000 ("Named Officers") during 2003, 2002 and 2001.

Summary Compensation Table

		Long Term Compensation Awards		
		Annual Compensation		SARs
Name and Principal Position	Year	Salary (\$)	Bonus (\$)	(#)
Stephen J. Benedetti				
Executive Vice President, Chief Financial Officer, Secretary	2003	183,960	102,000	—

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2002	180,000	120,000	-
2001	180,000	60,030	30,000

- (1) Does not include perquisites and other personal benefits, securities or property where the aggregate amount of such compensation to an executive officer is the lesser of either \$50,000 or 10% of annual salary and bonus.
- (2) Amount for 2003 for Mr. Benedetti consists of matching and profit sharing contributions to the Company's 401(k) Plan in the amount of \$12,000. Amounts for 2003 for Mr. Benedetti also consist of Group Term Life Insurance in the amount of \$160.

Aggregated SAR Exercises In Last Fiscal Year And Year-End SAR Value Table

The table below presents the total number of SARs exercised by the Named Officers in 2003 and held by the Named Officers at December 31, 2003 (distinguishing between SARs that are exercisable as of December 31, 2002 and those that had not become exercisable as of that date) and includes the aggregate amount by which the market value of the SARs (including related Dividend Equivalent Rights ("DERs")) exceeds the exercise price at December 31, 2003.

	SARs Exercised in 2003		Number of Unexercised SARs at 12-31-03		Value In-the-Mon
	Number Of SARs	Value Realized	Exercisable	Unexercisable	Exercisabl
Stephen J. Benedetti	0	\$0	30,000	0	\$123,00

SARs Granted During the Year

No SARs were granted during 2003.

Employment Agreements

Mr. Benedetti entered into an employment agreement with the Company, effective March 18, 2002. Mr. Benedetti's prior employment agreement dated September 4, 2001, was made a part of the new agreement. Under such agreement, which expires June 30, 2004, Mr. Benedetti receives his current base salary of \$180,000 per annum, adjusted each January 1st for inflation. Mr. Benedetti received incentive compensation of \$102,000 in 2003 and, thereafter is entitled to receive up to 66.7% of his base salary as approved by the Compensation Committee. The employment agreement will terminate in the event of Mr. Benedetti's death or total disability, may be terminated by the Company with "cause" (as defined therein) or for any reason other than cause, and may be terminated by the resignation of Mr. Benedetti. If the employment agreement is terminated by the Company for any reason other than cause, total disability or death, then the Company shall pay to Mr. Benedetti his salary for a period equal to the lesser of one year, or through the expiration date of the employment

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agreement. The Company also agreed to give Mr. Benedetti six months notice if his employment agreement would not be renewed, which the Company has not given to Mr. Benedetti. Accordingly, Mr. Benedetti's employment period will be extended for six months from the date such notice is given. The Company and Mr. Benedetti are currently negotiating a new employment agreement.

Senior Financial Management Code of Ethics

The Company is currently finalizing its Senior Management Code of Ethics, which the Company plans to have in place by the Annual Meeting of Shareholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as of March 5, 2004, by: (a) each director of Dynex Capital, (b) each of Dynex Capital's sole executive officer, (c) all directors and the executive officer of Dynex Capital as a group, and (d) all other stockholders known by Dynex Capital to be beneficial owners of more than 5% of the outstanding shares of any series of Dynex Capital stock. Unless otherwise indicated, each person has sole investment and sole voting power with respect to the securities shown. The Company does not have compensation plans or other arrangements under which equity securities are authorized for issuance.

Name	Number of Shares Beneficially Owned				Percent Beneficially Ow		
	Common (2)	Series A Preferred	Series B Preferred	Series C Preferred	Common (2)	Series A Preferred	Series C Preferred
Stephen J. Benedetti	18,114 (3)	-	-	-	*	-	-
J. Sidney Davenport	25,356	-	-	-	*	-	-
Thomas H. Potts	326,315 (4)	-	-	-	3.00%	-	-
Donald B. Vaden	9,483 (5)	-	-	-	*	-	-
Eric P. Von der Porten (4)	140,200	-	1,598	3,225	1.29%	-	*
Leon A. Felman	12,570 (7)	-	-	20,847 (8)	*	-	-
Barry Igdaloff	22,280 (9)	49,546 (10)	52,820 (11)	67,300 (12)	*	10.04%	7.6
Thomas B. Akin	993,950 (13)	78,621 (14)	132,798 (15)	52,608 (16)	9.14%	15.93%	19.3
Rockwood Partners L.P., Rockwood Asset Management, Inc., as a group (17)	788,500	20,740	21,656	9,612	7.25%	4.20%	3.1
All directors and executive officers as a							

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group(8)	1,548,268	128,167	187,216	143,980	14.24%	25.97%	27.2

* Less than 1% of the outstanding shares.

- (1) Percentages are based on 10,873,903 shares of Common Stock, 493,595 shares of Series A Preferred Stock, 688,189 shares of Series B Preferred Stock, and 684,893 shares of Series C Preferred Stock outstanding as of March 5, 2004, plus, for each person, the shares that would be issued assuming that person exercises all options he holds that are exercisable within sixty (60) days of March 5, 2004.
- (2) Does not reflect additional shares of Common Stock that holders of Preferred Stock are entitled to receive upon conversion of their Preferred Stock. Currently, two shares of Preferred Stock are convertible into one share of Common Stock.
- (3) Does not include 30,000 stock appreciation rights that vested on June 30, 2002.
- (4) Includes 9,077 shares of Common Stock owned of record by such person's children and spouse.
- (5) Includes 583 shares of Common Stock owned of record by such person's spouse.
- (6) Includes 140,200 shares of Common Stock, 1,598 shares of Series B Preferred Stock and 3,225 shares of Series C Preferred Stock held by Leeward Capital, L.P. Mr. Von der Porten is the managing member of Leeward Investments, LLC, which is the general partner of Leeward Capital, L.P.
- (7) Includes 87 shares of Common Stock owned of record by such person's spouse; 3,600 shares of Common Stock owned of record by The Leon A. Felman Keogh Profit Sharing Plan of which Mr. Felman is the Trustee; 3,150 shares of Common Stock owned of record by Homebaker Brand Profit Sharing Plan of which Mr. Felman is the Trustee; and 1,340 shares of Common Stock held of record by HLF Corporation of which Mr. Felman is an officer.
- (8) Includes 11,670 shares of Series C Preferred Stock owned of record by Homebaker Brand Profit Sharing Plan of which Mr. Felman is the Trustee; 3,687 shares of Series C Preferred Stock owned of record by The Leon A. Felman Keogh Profit Sharing Plan of which Mr. Felman is the Trustee; 350 shares of Series C Preferred Stock owned of record by The Felman Family Trust of which Mr. Felman is the Trustee; and 980 shares of Series C Preferred Stock owned of record by HLF Corporation of which Mr. Felman is an officer.
- (9) Includes 22,280 shares of Common Stock owned by clients of Rose Capital of which Mr. Igdaloff is the sole proprietor. Shares are held with shared power to vote and dispose thereof.
- (10) Includes 29,146 shares of Series A Preferred Stock owned by clients of Rose Capital. Shares are held with shared power to vote and dispose thereof.
- (11) Includes 26,520 shares of Series B Preferred Stock owned by clients of Rose Capital. Shares are held with shared power to vote and dispose thereof.
- (12) Includes 24,900 shares of Series C Preferred Stock owned by clients of Rose Capital. Shares are held with shared power to vote and dispose thereof.
- (13) Includes 440,000 shares of Common Stock held by Talkot Crossover Fund, L.P.

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Mr. Akin is the managing general partner of Talkot Capital which is the general partner of Talkot Crossover Fund, L.P. Shares are held with shared power to vote and dispose thereof.

- (14) Includes 60,550 shares of Series A Preferred Stock held by Talkot Crossover Fund, L.P. Mr. Akin is the managing general partner of Talkot Capital which is the general partner of Talkot Crossover Fund, L.P. Shares are held with shared power to vote and dispose thereof.
- (15) Includes 81,437 shares of Series B Preferred Stock held by Talkot Crossover Fund, L.P. Mr. Akin is the managing general partner of Talkot Capital which is the general partner of Talkot Crossover Fund, L.P. Shares are held with shared power to vote and dispose thereof.
- (16) Includes 17,909 shares of Series C Preferred Stock held by Talkot Crossover Fund, L.P. Mr. Akin is the managing general partner of Talkot Capital which is the general partner of Talkot Crossover Fund, L.P. Shares are held with shared power to vote and dispose thereof.
- (17) Address: 35 Mason Street, Greenwich, CT 06830. Shares are held with shared power to vote and dispose thereof. Shareholdings as of December 30, 2003 based on information provided by Rockwood Partners, L.P. and Rockwood Asset Management, Inc.

Item 13. Certain relationships and related transactions

The Company and Dynex Commercial, Inc., now known as DCI Commercial, Inc ("DCI") have been jointly named in litigation regarding the activities of DCI while it was an operating subsidiary of an affiliate of the Company, Dynex Holding, Inc. The Company and DCI entered into a Litigation Cost Sharing Agreement whereby the parties set forth how the costs of defending against litigation would be shared, and whereby the Company agreed to fund all costs of such litigation, including DCI's portion. DCI's cumulative portion of costs associated with litigation and funded by the Company is \$2,499 and is secured by the proceeds of any counterclaims that DCI may receive in the litigation. DCI costs funded by the Company are considered loans, and bear simple interest at the rate of Prime plus 8.0% per annum. At December 31, 2003, the total amount due the Company under the Litigation Cost Sharing Agreement, including interest, was \$3,028, which has been fully reserved by the Company. DCI is currently wholly-owned by ICD Holding, Inc. A director and an executive of the Company are the sole shareholders of ICD Holding. For more information on this litigation, see "Item 3. Legal Proceedings" of the Company's Annual Report on Form 10-K.

Item 14. Principal Accountant Fees and Services

Fees of Independent Public Accountants

Audit Fees

The aggregate fees billed by Deloitte & Touche LLP for professional services rendered for the audit of the Company's annual financial statements for the fiscal years ended December 31, 2003 and 2002, and for the review of the financial statements included in the Company's Quarterly Reports on Form 10-Q, and services that are normally provided in connection with statutory and regulatory filings and engagements, for those fiscal years were \$254,331 for 2003 and \$274,154 for 2002.

Audit Related Fees

The aggregate fees billed by Deloitte & Touche LLP for professional

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services for assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements and not reported under the heading "Audit Fees" above for the fiscal years ended December 31, 2003 and December 31, 2002 were \$15,500 and \$55,490, respectively. During 2003, these services included professional services rendered in connection with the Company's tender offer for its preferred shares. During 2002, these services included professional services rendered in connection with the amendment of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001, and Quarterly Report on Form 10-Q for the period ended March 31, 2002, for the restatement of certain of its collateral for collateralized bonds, which was effective in the quarter.

Tax Fees

There were no fees billed by Deloitte & Touche LLP for professional services for tax compliance, tax advice and tax planning for the fiscal years ended December 31, 2003 and December 31, 2002.

All Other Fees

There were no fees billed by Deloitte & Touche LLP for any other services rendered to the Company for the fiscal years ended December 31, 2003 and 2002.

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DYNEX CAPITAL, INC.
(Registrant)

April 29, 2004

/s/ Stephen J. Benedetti

Stephen J. Benedetti
Executive Vice President,
Chief Financial Officer and Secretary