

DIGITAL RIVER INC /DE
Form S-8
June 05, 2003

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As filed with the Securities and Exchange Commission on June 5, 2003. Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DIGITAL RIVER, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

41-1901640
(I.R.S. Employer Identification No.)

**9625 West 76th Street, Suite 150
Eden Prairie, Minnesota 55344
(952) 253-1234**
(Address of principal executive offices)

**1998 Stock Option Plan
2000 Employee Stock Purchase Plan**
(Full title of the plan)

**Joel A. Ronning
Chief Executive Officer
9625 West 76th Street, Suite 150
Eden Prairie, Minnesota 55344
(952) 253-1234**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Michael J. Sullivan, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin
A Professional Corporation
Three Embarcadero Center, Seventh Floor
San Francisco, California 94111
(415) 434-1600**

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price per Share(1) | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee |
|--------------------------------------|-------------------------|--|--|-------------------------------|
|--------------------------------------|-------------------------|--|--|-------------------------------|

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|--|------------------|---------|--------------|------------|
| Stock Options and Common Stock (par value \$0.01) | 2,600,000 shares | \$19.60 | \$50,960,000 | \$4,122.67 |
|--|------------------|---------|--------------|------------|

- (1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended (the "Securities Act"). The offering price per share and the aggregate offering price are based upon the average of the high and low prices of the registrant's Common Stock as reported on the Nasdaq National Market on June 3, 2003.
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INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENTS ON FORMS S-8 NOS. 333-67085, 333-79269, 333-53332 AND 333-69036

The contents of Registration Statements on Forms S-8 Nos. 333-67085, 333-79369, 333-53332 and 333-69036 filed with the Securities and Exchange Commission on November 10, 1998, May 25, 1999, May 10, 2000, January 8, 2001 and September 6, 2001, respectively, are incorporated by reference herein with such modifications as are set forth below.

EXHIBITS

| Exhibit Number | Description |
|-------------------|---|
| 3.1 (1) | Amended and Restated Certificate of Incorporation of the Company, as currently in effect. |
| 3.2 (2) | Bylaws of the Company, as currently in effect. |
| 3.3 (1) | Certificate of Amendment of Amended and Restated Certificate of Incorporation (amending Exhibit 3.1). |
| 5.1 | Opinion of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, a Professional Corporation. |
| 23.1 | Consent of Ernst & Young LLP. |
| 23.2 | Consent of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, a Professional Corporation, is contained in Exhibit 5.1 to this registration statement. |
| 24.1 | Power of Attorney is contained on the signature pages. |
| 99.1 | 1998 Stock Option Plan, as amended. |
| 99.2 | 2000 Employee Stock Purchase Plan, as amended, and Offering. |

- (1) Incorporated by reference to the Company's Registration Statement on Form S-3 (File No. 333-81626) filed with the Securities and Exchange Commission on January 29, 2002.

- (2) Incorporated by reference to the Annual Report on Form 10-K405 filed with the Securities and Exchange Commission on March 27, 2001.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned,

EXHIBIT INDEX

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| 99.2 | 2000 Employee Stock Purchase Plan, as amended, and Offering. |

(1) Incorporated by reference to the Company's Registration Statement on Form S-3 (File No. 333-81626) declared effective on February 12, 2002.

(2) Incorporated by reference to the Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 27, 2001.

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