

Empire State Realty Trust, Inc.
Form 8-K
March 07, 2018

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): March 2, 2018

EMPIRE STATE REALTY TRUST, INC.

(Exact Name of Registrant as Specified in its Charter)

Maryland
(State or other Jurisdiction
of Incorporation)

001-36105
(Commission
File Number)

37-1645259
(I.R.S. Employer
Identification No.)

111 West 33rd Street

10120

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12th Floor

New York, New York

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: (212) 687-8700

Not Applicable

(Former name or former address, if changed from 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in 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 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On March 2, 2018, the Board of Directors of Empire State Realty Trust, Inc. (the Company) adopted the Second Amended and Restated Bylaws of the Company (the Amended Bylaws), effective as of March 2, 2018, to implement proxy access. The Amended Bylaws also reflect certain conforming, technical and clarifying changes made to the previous bylaws of the Company.

The Amended Bylaws include a new Section 2.14 that permits a stockholder, or group of no more than 20 stockholders, meeting specified eligibility requirements, to include director nominees in the Company's proxy materials for annual meetings of its stockholders. The maximum number of director nominees that may be submitted pursuant to these provisions may not exceed 20% of the number of directors then in office. In order to be eligible to utilize the proxy access provisions, a stockholder, or group of stockholders, must, among other requirements:

have owned shares of common stock equal to at least 3% of the aggregate of the issued and outstanding shares of common stock of the Company continuously for at least the prior three (3) years;

represent that such shares were acquired in the ordinary course of business and not with the intent to change or influence control at the Company and that such stockholder or group does not presently have such intent; and

provide a notice requesting the inclusion of director nominees in the Company's proxy materials and provide other required information to the Company not earlier than 150 days nor later than 120 days prior to the first anniversary of the date of mailing of the notice for the preceding year's annual meeting of stockholders (with adjustments if the date for the upcoming annual meeting of stockholders is advanced or delayed by more than 30 days from the anniversary date of the prior year's annual meeting).

Additionally, all director nominees submitted through these provisions must be independent (pursuant to the requirements under the rules of the primary stock exchange on which the common stock of the Company is listed, the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors, as well as the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the common stock of the Company is listed) and meet specified additional criteria. Stockholders will not be entitled to utilize this proxy access right at an annual meeting if the Company receives notice through its traditional advanced notice by-law provisions that a stockholder intends to nominate a director at such meeting.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit

No.	Description
3.1	<u>Second Amended and Restated Bylaws of Empire State Realty Trust, Inc.</u>

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.

EMPIRE STATE REALTY TRUST, INC.

(Registrant)

Date: March 7, 2018

By: /s/ Thomas N. Keltner, Jr.

Name: Thomas N. Keltner, Jr.

Title: Executive Vice President and General Counsel