

SPIRIT REALTY CAPITAL, INC.
Form 8-K
May 24, 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
May 21, 2018

Date of Report (Date of earliest event reported)

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

Maryland
(State or other Jurisdiction
of Incorporation)

001-36004
(Commission
File Number)

20-1676382
(IRS Employer
Identification No.)

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2727 North Harwood Street, Suite 300

Dallas, Texas 75201

(Address of principal executive offices)

(972) 476-1900

(Registrant's telephone number, including area code)

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 Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 May 21, 2018, Spirit Realty Capital, Inc. (Spirit) entered into a Separation and Distribution Agreement (the Separation and Distribution Agreement) with Spirit MTA REIT (SMTA) to effect the spin-off of SMTA from Spirit and provide a framework for the relationship between SMTA and Spirit after the spin-off. The Separation and Distribution Agreement governs the relationships between Spirit and SMTA subsequent to the completion of the spin-off and provides for the allocation between SMTA and Spirit of Spirit s assets, liabilities and obligations attributable to periods prior to the spin-off.

A summary of the Separation and Distribution Agreement is set forth below. For purposes of this summary, (1) the SMTA Group means SMTA and its subsidiaries and (2) the Spirit Group means Spirit and its subsidiaries other than SMTA and its subsidiaries. The Separation and Distribution Agreement is attached hereto as Exhibit 2.1 and is incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Separation and Distribution Agreement.

Transfer of Assets and Assumption of Liabilities

The Separation and Distribution Agreement identifies the assets and liabilities to be retained by, transferred to, assumed by, or assigned to, as the case may be, each of SMTA and Spirit as part of the separation of Spirit into two companies, and describes when and how these transfers, assumptions and assignments will occur, although, many of the transfers, assumptions and assignments may have already occurred prior to the parties entering into the Separation and Distribution Agreement. In particular, the Separation and Distribution Agreement provides that, subject to the terms and conditions contained in the Separation and Distribution Agreement immediately prior to the time of effectiveness of the spin-off, Spirit and SMTA will take all actions necessary so that the SMTA Group will:

(1) own, to the extent it does not already own, the assets that collateralize Master Trust 2014 (a standalone asset-backed securitization program), substantially all of the properties leased to Shopko Retail Shops Holding Corp. (Shopko) and certain of its affiliates (the Shopko Assets), and certain other assets;

(2) assume, to the extent it is not already liable for:

- (a) any liabilities relating to or arising out of SMTA s initial portfolio of assets described under (1) above whether arising prior to, at the time of, or after, the effectiveness of the spin-off;
- (b) all liabilities recorded on SMTA s Unaudited Pro Forma Combined Balance Sheet as of December 31, 2017, as included herein, subject to the satisfaction of any liabilities subsequent to the date of such balance sheet, provided that the amounts set forth on such balance sheet with respect to any liabilities shall not be treated as minimum or maximum amounts or limitations on the amount of such liabilities;
- (c) any potential liabilities related to Spirit s Exchange Act reports relating to disclosures about SMTA s initial portfolio of assets described under (1) above;
- (d) any liabilities arising out of claims by SMTA s trustees, officers and affiliates arising after the time of effectiveness of the spin-off against either Spirit or SMTA to the extent they relate to SMTA s initial portfolio of assets described under (1) above; and

- (e) any liabilities expressly created by the Separation and Distribution Agreement or any ancillary agreements as liabilities to be assumed or retained by SMTA or any member of the SMTA Group, and all agreements, obligations and liabilities of any member of the SMTA Group under the Separation and Distribution Agreement or any ancillary agreement.

In addition, at or prior to the spin-off, Spirit Realty, L.P. shall make a cash contribution of \$3.0 million to SMTA and, to the extent directed by Spirit in its discretion, SMTA shall have distributed to Spirit or Spirit Realty, L.P. all other cash held by SMTA or its subsidiaries, other than any cash held in restricted escrows. SMTA shall also reimburse Spirit post-spin for certain expenses and shall reimburse Spirit upon the sale of certain Shopko Assets, in

the amount of \$82,500 per asset, as reimbursement for certain fees previously paid by Spirit to Shopko. Additionally, SMTA will pay Spirit Realty, L.P. \$2.0 million within 60 days of the spin-off for certain estimated rents received with respect to SMTA assets that relates to the period between May 1, 2018 and the spin-off.

Except as otherwise provided in the Separation and Distribution Agreement, Spirit will retain all other assets and liabilities.

Except as may expressly be set forth in the Separation and Distribution Agreement or any ancillary agreement, all assets will be transferred on an as is, where is basis without representation or warranty.

Certain of the liabilities and obligations to be assumed by one party or for which one party will have an indemnification obligation under the Separation and Distribution Agreement are, and following the separation may continue to be, the legal or contractual liabilities or obligations of another party. Each such party that continues to be subject to such legal or contractual liability or obligation will rely on the applicable party that assumed the liability or obligation or the applicable party that undertook an indemnification obligation with respect to the liability or obligation, as applicable, under the Separation and Distribution Agreement, to satisfy the performance and payment obligations or indemnification obligations with respect to such legal or contractual liability or obligation.

Further Assurances

Each party will cooperate with the other and use commercially reasonable efforts, prior to, on and after the distribution date, to take promptly, or cause to be taken promptly, all actions to do promptly, or cause to be done promptly, all things reasonably necessary, proper or advisable on its part to consummate and make effective the transactions contemplated by, and the intent and purposes of, the Separation and Distribution Agreement. In addition, neither party will, nor will either party allow its respective subsidiaries to, without the prior consent of the other party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by the Separation and Distribution Agreement and the ancillary agreements thereto, if any. Both parties will also use commercially reasonable efforts to cause third parties, such as insurers or trustees, to fulfill any obligations they are required to fulfill under the Separation and Distribution Agreement.

The Distribution

The Separation and Distribution Agreement also governs the rights and obligations of the parties regarding the proposed distribution. SMTA has agreed to distribute to Spirit, as a share dividend, (or take such other appropriate actions to ensure that Spirit has the requisite number of SMTA common shares) the number of SMTA common shares distributable in the distribution to effectuate the separation. In addition, Spirit has agreed to cause its agent to distribute to Spirit stockholders that hold shares of Spirit common stock as of the applicable distribution record date all of SMTA's common shares.

Additionally, the Separation and Distribution Agreement provides that the distribution is subject to several conditions that must be satisfied or waived by Spirit in its sole discretion.

Termination of Other Arrangements

The Separation and Distribution Agreement provides that, other than the Separation and Distribution Agreement, the ancillary agreements to the Separation and Distribution Agreement (if any), the Property Management and Servicing Agreement, certain confidentiality and non-disclosure agreements among any members of the SMTA Group, the Spirit Group or employees of SMTA's Manager, Spirit Realty, L.P., all prior agreements and arrangements, whether written or not, between any member of the Spirit Group on the one hand, and any member of the SMTA Group on the other hand (except to the extent any person that is not a member of the SMTA Group or Spirit Group is also a party to

such agreements or arrangements), are terminated and will cease to be of further force and effect as of the time of effectiveness of the Separation and Distribution Agreement. At the time of such termination, all parties will be released from liability under such agreements and arrangements, other than with respect to the settlement of intercompany accounts, which will be satisfied and/or settled in full in cash or otherwise cancelled and terminated or extinguished by the relevant members of the SMTA Group or Spirit Group prior to the time of effectiveness of the spin-off.

Releases and Indemnification

Subject to certain exceptions, including with respect to liabilities assumed by, or allocated to, SMTA or Spirit, the Separation and Distribution Agreement provides that SMTA and Spirit will generally agree to release each other from all liabilities existing or arising from acts or events prior to or on the distribution date.

In addition, the Separation and Distribution Agreement provides that, except as otherwise provided for in other documents related to the separation, SMTA will indemnify Spirit and its affiliates and representatives against losses arising from:

- (1) any SMTA liabilities as described under *Transfer of Assets and Assumption of Liabilities* above;
 - (2) any failure by any member of the SMTA Group or any other person to pay, perform or otherwise promptly discharge any liability listed under (1) above in accordance with their respective terms, whether prior to, at or after the time of effectiveness of the spin-off;
 - (3) any breach by any member of the SMTA Group of any provision of the Separation and Distribution Agreement and any agreements ancillary thereto (if any), subject to any limitations of liability provisions and other provisions applicable to any such breach set forth therein;
 - (4) any liability related to the performance undertakings made by Spirit Realty, L.P. with respect to Master Trust 2014, and any liability allocated to the Spirit Group under the environmental indemnity related to the commercial mortgage-backed securities that encumber one of SMTA's assets; and
 - (5) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the registration statement on Form 10 originally filed by SMTA with the Securities and Exchange Commission on March 6, 2018, as amended, or the Information Statement filed as Exhibit 99.1 thereto (the *Information Statement*) other than information that relates solely to any assets owned, directly or indirectly by Spirit, excluding the assets that will comprise SMTA's initial portfolio.
- Spirit shall indemnify SMTA and SMTA's affiliates and representatives against losses arising from:

- (1) any liability of Spirit or its subsidiaries (excluding any liabilities related to SMTA);
- (2) any failure of any member of the Spirit Group or any other person to pay, perform or otherwise promptly discharge any liability listed under (1) above in accordance with their respective terms, whether prior to, at or after the time of effectiveness of the spin-off;
- (3) any breach by any member of the Spirit Group of any provision of the Separation and Distribution Agreement and any agreements ancillary thereto (if any), subject to any limitations of liability provisions

and other provisions applicable to any such breach set forth therein; and

- (4) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Information Statement or the registration statement of which the Information Statement is a part that relates solely to any assets owned, directly or indirectly by Spirit, other than SMTA's initial portfolio of assets.

Indemnification obligations shall generally be net of any insurance proceeds actually received by the indemnified person. The Separation and Distribution Agreement provides that SMTA and Spirit will waive any right to special, indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages provided that any such liabilities with respect to third party claims shall be considered direct damages.

Competition

The Separation and Distribution Agreement does not include any non-competition or other similar restrictive arrangements with respect to the range of business activities that may be conducted, or investments that may be made, by either the Spirit Group or the SMTA Group. Each of the parties agree that nothing set forth in the agreement shall be construed to create any restriction or other limitation on the ability of any of the Spirit Group or SMTA Group to engage in any business or other activity that overlaps or competes with the business of any other party.

Insurance

Prior to the effectiveness of the spin-off, Spirit and SMTA shall use commercially reasonable efforts to obtain separate insurance policies for SMTA on commercially reasonable terms, except for those policies addressed under an insurance sharing agreement. SMTA will be responsible for all premiums, costs and fees associated with any new insurance policies placed for SMTA's benefit.

Dispute Resolution

In the event of any dispute arising out of the Separation and Distribution Agreement, the parties, each having designated a representative for such purpose, will negotiate in good faith for 30 days to resolve any disputes between the parties. If the parties are unable to resolve disputes in this manner within 30 days, the disputes will be resolved through binding arbitration.

Other Matters Governed by the Separation and Distribution Agreement

Other matters governed by the Separation and Distribution Agreement include, amongst others, access to financial and other information and confidentiality.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Exhibit
2.1	<u>Separation and Distribution Agreement</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.

Spirit Realty Capital, Inc.

Date: May 24, 2018

By: /s/ Michael Hughes

Name: Michael Hughes

Title: Executive Vice President, Chief Financial Officer
and Treasurer