

DUKE REALTY CORP
Form 8-K
April 15, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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): April 15, 2009

DUKE REALTY CORPORATION

(Exact name of registrant as specified in its charter)

Indiana
(State of Incorporation)

1-9044
(Commission File Number)
600 East 96th Street

35-1740409
(IRS Employer Identification No.)

Suite 100

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Indianapolis, IN 46240

(Address of principal executive offices, zip code)

Registrant's telephone number, including area code: (317) 808-6000

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))

Item 7.01. Regulation FD Disclosure.

A copy of the Press Release is furnished as Exhibit 99.1 to this report and is incorporated into this Item 7.01 by reference.

On April 15, 2009, Duke Realty Corporation (the Company) issued a press release announcing the proposed offering of 64,000,000 shares of common stock in an underwritten public offering pursuant to its effective shelf registration statement previously filed with the Securities and Exchange Commission. A copy of the press release is furnished as Exhibit 99.1 to this report and is incorporated herein by reference.

The information in this item shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934 (the Exchange Act), or otherwise subject to the liabilities of Section 18, nor shall it be deemed incorporated by reference in any of the Company's filings under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent, if any, expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
99.1	Press Release, dated April 15, 2009, issued by Duke Realty Corporation

SIGNATURES

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.

DUKE REALTY CORPORATION

By: /s/ Howard L. Feinsand
Howard L. Feinsand
Executive Vice President, General Counsel and
Corporate Secretary

Dated: April 15, 2009

Exhibit Index

Exhibit Number	Description
99.1	Press Release, dated April 15, 2009, issued by Duke Realty Corporation
	eft: Black 1pt solid; padding-left: 6pt"> 14,077,000 * 12 CHECK BOX IF THE AGGREGATE AMOUNT IN
	ROW (11) EXCLUDES CERTAIN SHARES 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN
	ROW (11) 8.1% 14 TYPE OF REPORTING PERSON IN

* Includes 4,350,000 shares underlying call options currently exercisable as further described in Item 6 to the Schedule 13D.

CUSIP No. 402635304

1	NAME OF REPORTING PERSON	
	Ariel Warszawski	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
	OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	USA	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		- 0 -
OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER
		14,077,000 *
PERSON WITH	9	SOLE DISPOSITIVE POWER
		- 0 -
	10	SHARED DISPOSITIVE POWER

14,077,000

*

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

14,077,000 *

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY AMOUNT
IN ROW (11)

8.1%

14 TYPE OF REPORTING
PERSON

IN

CUSIP No. 402635304

The following constitutes Amendment No. 1 to the Schedule 13D filed by the undersigned (“Amendment No. 1”). This Amendment No. 1 amends the Schedule 13D as specifically set forth herein.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 is hereby amended and restated to read as follows:

The Shares purchased by FVP Master Fund were purchased with working capital (which may, at any given time, include margin loans made by brokerage firms in the ordinary course of business) in open market transactions. The aggregate purchase price of the 9,727,000 Shares beneficially owned by FVP Master Fund is approximately \$128,761,305, including brokerage commissions. The aggregate purchase price of certain call options exercisable into 4,350,000 Shares beneficially owned by FVP Master Fund, as further described in Item 6 to the Schedule 13D, is approximately \$3,575,742, including brokerage commissions.

Item 4. Purpose of Transaction.

Item 4 is hereby amended to add the following:

On January 17, 2019, the Reporting Persons delivered a letter to the Issuer’s board of directors (the “Board”) highlighting the Issuer’s lack of urgency in addressing persistent stock price underperformance; failure to commit to steps that could maximize stockholder value; and the current Board’s lack of necessary skills, experience and alignment with stockholders to effectively steer the Issuer’s strategy and maximize long-term stockholder value. In the letter, the Reporting Persons also call for steps including a \$500 million share repurchase program and a moratorium on value-destructive share issuances. The foregoing description of the letter does not purport to be complete and is qualified in its entirety by reference to the full text of the letter, which is filed as Exhibit 99.1 and is incorporated herein by reference.

Item 5. Interest in Securities of the Issuer.

Items 5(a)-(c) are hereby amended and restated to read as follows:

The aggregate percentage of Shares reported owned by each person named herein is based upon 173,302,055 Shares outstanding, as of October 29, 2018, which is the total number of Shares outstanding as reported in the Issuer’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 1, 2018.

A. FVP Master Fund

(a) As of the close of business on January 17, 2019, FVP Master Fund beneficially owned 14,077,000 Shares, including 4,350,000 shares underlying certain call options.

Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

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(c) The transactions in the securities of the Issuer by FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

B. Firefly Value Partners

(a) Firefly Value Partners, as the investment manager of FVP Master Fund, may be deemed the beneficial owner of the 14,077,000 Shares owned by FVP Master Fund, including 4,350,000 shares underlying certain call options.

Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

Firefly Value Partners has not entered into any transactions in the securities of the Issuer since the filing of the (c) Schedule 13D. The transactions in the securities of the Issuer on behalf of FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

C. FVP GP

(a) FVP GP, as the general partner of FVP Master Fund, may be deemed the beneficial owner of the 14,077,000 Shares owned by FVP Master Fund, including 4,350,000 shares underlying certain call options.

Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

FVP GP has not entered into any transactions in the securities of the Issuer since the filing of the Schedule 13D. (c) The transactions in the securities of the Issuer on behalf of FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

D. Firefly Management

(a) Firefly Management, as the general partner of Firefly Value Partners, may be deemed the beneficial owner of the 14,077,000 Shares owned by FVP Master Fund, including 4,350,000 shares underlying certain call options.

Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

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(c) Firefly Management has not entered into any transactions in the securities of the Issuer since the filing of the Schedule 13D. The transactions in the securities of the Issuer on behalf of FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

E. Mr. Heslop

(a) Mr. Heslop, as a Managing Member of FVP GP and Firefly Management, may be deemed the beneficial owner of the 14,077,000 Shares owned by FVP Master Fund, including 4,350,000 shares underlying certain call options.
Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

Mr. Heslop has not entered into any transactions in the securities of the Issuer since the filing of the Schedule 13D.
(c) The transactions in the securities of the Issuer on behalf of FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

F. Mr. Warszawski

(a) Mr. Warszawski, as a Managing Member of FVP GP and Firefly Management, may be deemed the beneficial owner of the 14,077,000 Shares owned by FVP Master Fund, including 4,350,000 shares underlying certain call options.
Percentage: Approximately 8.1%

- (b)
1. Sole power to vote or direct vote: 0
 2. Shared power to vote or direct vote: 14,077,000
 3. Sole power to dispose or direct the disposition: 0
 4. Shared power to dispose or direct the disposition: 14,077,000

Mr. Warszawski has not entered into any transactions in the securities of the Issuer since the filing of the Schedule 13D. The transactions in the securities of the Issuer on behalf of FVP Master Fund since the filing of the Schedule 13D are set forth in Schedule A and are incorporated herein by reference.

Each Reporting Person, as a member of a “group” with the other Reporting Persons for the purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, may be deemed the beneficial owner of the Shares directly owned by the other Reporting Persons. Each Reporting Person disclaims beneficial ownership of such Shares except to the extent of his or its pecuniary interest therein.

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Item 7.

Material to be Filed as Exhibits.

Item 7 is hereby amended to add the following exhibit:

99.1

Letter to the Board, dated January 17, 2019.

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SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: January 17, 2019

FVP Master Fund, L.P.
By: FVP GP, LLC,
its General Partner

By: /s/ Ariel Warszawski
Name: Ariel Warszawski
Title: Managing Member

Firefly Value Partners, LP
Firefly Management
By: Company GP, LLC,
its General Partner

By: /s/ Ariel Warszawski
Name: Ariel Warszawski
Title: Managing Member

FVP GP, LLC

By: /s/ Ariel Warszawski
Name: Ariel Warszawski
Title: Managing Member

Firefly Management
Company GP, LLC

By: /s/ Ariel Warszawski
Name: Ariel Warszawski
Title: Managing Member

/s/ Ariel Warszawski
Ariel Warszawski

/s/ Ryan Heslop
Ryan Heslop

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SCHEDULE A**Transactions in the Securities of the Issuer Since the Filing of the Schedule 13D**

<u>Nature of the Transaction</u>	<u>Amount of Securities Purchased/(Sold)</u>	<u>Date of Price (\$) Purchase/Sale</u>
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FVP Master fund, l.p.

Purchase of Common Stock	187,000	7.6351 12/19/2018
Purchase of Common Stock	10,533	7.0500 12/20/2018
Purchase of Common Stock	139,467	6.6795 12/21/2018
Purchase of Common Stock	40,000	6.6750 12/27/2018
Purchase of Common Stock	350,000	6.5854 12/31/2018