

Digital Realty Trust, Inc.
Form S-8
October 07, 2015

As filed with the Securities and Exchange Commission on October 7, 2015

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

DIGITAL REALTY TRUST, INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction of
Incorporation or Organization)

26-0081711
(IRS Employer
Identification No.)

Four Embarcadero Center, Suite 3200

**San Francisco, California
(Address of Principal Executive Offices)**

**94111
(Zip Code)**

Digital Realty Trust, Inc. 2015 Employee Stock Purchase Plan

(Full Title of the Plan)

A. William Stein

Chief Executive Officer

Four Embarcadero Center, Suite 3200

San Francisco, CA 94111

(415) 738-6500

(Name and Address and Telephone Number, Including Area Code, of Agent for Service)

Copy to:

Julian T.H. Kleindorfer, Esq.

Latham & Watkins LLP

355 S. Grand Ave.

Los Angeles, CA 90071-1560

(213) 485-1234

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered⁽¹⁾ | Proposed | Proposed | Amount of Registration Fee |
|---|--|---|---|---------------------------------------|
| | | Maximum Offering Price Per Share⁽²⁾ | Maximum Aggregate Offering Price⁽²⁾ | |
| Common Stock, par value \$0.01 per share, to be issued pursuant to the Digital Realty Trust, Inc. 2015 Employee Stock Purchase Plan | 4,407,905 | \$64.61 | \$284,772,702.53 | \$28,676.61 |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, this registration statement shall also automatically cover any additional shares of our common stock which become issuable under our Digital Realty Trust, Inc. 2015 Employee Stock Purchase Plan, which we refer to as the Plan, by reason of any stock dividend, stock split, recapitalization or other similar transaction which results in an increase in the number of outstanding shares of our common stock.
- (2) This estimate is made pursuant to Rule 457(c) solely for purposes of calculating the registration fee pursuant to Rule 457(h), and is based on a price of \$64.61, which represents the average of the high and low prices per share of our common stock as reported on the New York Stock Exchange on September 30, 2015.

INTRODUCTION

This Registration Statement on Form S-8 is filed by Digital Realty Trust, Inc. (referred to herein as our, we, us, the Company and the Registrant) relating to 4,407,905 shares of our common stock, \$0.01 par value per share (the Common Stock), issuable pursuant to the Digital Realty Trust, Inc. 2015 Employee Stock Purchase (referred to herein as the Plan).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the Plan as specified by Rule 428(b)(1) of the Securities Act. In accordance with Rule 428 of the Securities Act and the requirements of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the SEC) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. The Registrant shall maintain a file of such documents in accordance with the provisions of Rule 428(a)(2) of the Securities Act. Upon request, the Registrant shall furnish to the SEC or its staff a copy of any or all of the documents included in the file.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this registration statement, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the following documents we have filed, or may file, with the SEC:

The Company's Current Reports on Form 8-K filed with the SEC on February 19, 2015 (except with respect to Item 7.01 thereof), March 19, 2015, April 16, 2015 (except with respect to Item 7.01 thereof), April 21, 2015, May 14, 2015, June 23, 2015, July 14, 2015 (except with respect to Item 7.01 thereof), July 20, 2015, July 28, 2015, August 13, 2015, August 17, 2015, August 24, 2015, September 24, 2015 and October 2, 2015 (other than documents or portions of those documents not deemed to be filed);

The Company's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2015 and June 30, 2015, filed with the SEC on May 8, 2015 and August 6, 2015;

The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed with the SEC on March 2, 2015;

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The Company's Definitive Proxy Statement on Schedule 14A filed with the SEC on April 1, 2015 (solely to the extent specifically incorporated by reference into the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014); and

The description of the Company's shares of Common Stock contained in the Company's Registration Statement on Form 8-A (Registration No. 001-32336) filed with the SEC on October 10, 2004, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this

Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any information that we later file with the SEC will automatically update and supersede the information and statements contained in a document incorporated or deemed to be incorporated by reference herein. Any such information or statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute part of this Registration Statement. Under no circumstances will any information filed under Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 6. Indemnification of Directors and Officers.

The Registrant's charter contains a provision permitted under the Maryland General Corporation Law that eliminates each director's and officer's personal liability to the Registrant and the Registrant's stockholders for monetary damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. The MGCL requires a corporation (unless its charter provides otherwise, which the Registrant's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or are threatened to be made a party by reason of their service in those or other capacities unless it is established that:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and:

was committed in bad faith; or

was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

The Registrant's charter authorizes the Registrant to obligate and the Registrant's bylaws obligate the Registrant, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

any present or former director or officer who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity; or

any individual who, while a director or officer of our company and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, limited liability company, employee benefit plan or any other enterprise as a director, officer, partner, trustee, member or manager and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

The Registrant's charter and bylaws also permit the Registrant to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of the Registrant or a predecessor of the Registrant.

The Registrant has entered into indemnification agreements with each of its executive officers and directors whereby it indemnifies such executive officers and directors to the fullest extent permitted by Maryland law against all expenses and liabilities, subject to limited exceptions. These indemnification agreements also provide that upon an application for indemnity by an executive officer or director to a court of appropriate jurisdiction, such court may order the Registrant to indemnify such executive officer or director.

In addition, our directors and officers are indemnified for specified liabilities and expenses pursuant to the partnership agreement of Digital Realty Trust, L.P., the partnership in which the Registrant is the sole general partner.

Item 8. Exhibits.

| Exhibit | Description |
|---------|--|
| 4.1 | Articles of Amendment and Restatement of Digital Realty Trust, Inc., as amended (incorporated by reference to Exhibit 4.1 to Digital Realty Trust, Inc.'s Registration Statement on Form S-8 filed on April 28, 2014). |
| 4.2 | Thirteenth Amended and Restated Agreement of Limited Partnership of Digital Realty Trust, L.P., as amended by that certain First Amendment, dated as of April 7, 2014 (incorporated by reference to Exhibit 3.4 to the Combined Quarterly Report on Form 10-Q of Digital Realty Trust, Inc. and Digital Realty Trust, L.P. filed on May 12, 2014). |
| 4.3 | Second Amendment to Thirteenth Amended and Restated Agreement of Limited Partnership of Digital Realty Trust, L.P., as amended by that certain First Amendment, dated as of April 7, 2014 (incorporated by reference to Exhibit 3.1 to the Combined Current Report on Form 8-K of Digital Realty Trust, Inc. and Digital Realty Trust, L.P. filed on July 14, 2015). |
| 4.4 | Fifth Amended and Restated Bylaws of Digital Realty Trust, Inc. (incorporated by reference to Exhibit 3.1 to Digital Realty Trust, Inc.'s Current Report on Form 8-K filed on May 2, 2014). |
| 4.5 | Specimen Certificate for Common Stock for Digital Realty Trust, Inc. (incorporated by reference to Exhibit 4.1 to Digital Realty Trust, Inc.'s Registration Statement on Form S-11 (Registration No. 333-117865) filed on October 26, 2004). |
| 4.6 | Digital Realty Trust, Inc. 2015 Employee Stock Purchase Plan (incorporated by reference to Appendix A to Digital Realty Trust, Inc.'s Definitive Proxy Statement on Schedule 14A filed on April 1, 2015). |
| 4.7 | First Amendment to Digital Realty Trust, Inc. 2015 Employee Stock Purchase Plan. |
| 5.1 | Opinion of Venable LLP. |
| 23.1 | Consent of Venable LLP (included in Exhibit 5.1). |
| 23.2 | Consent of KPMG LLP, Independent Registered Public Accounting Firm. |
| 23.3 | Consent of PricewaterhouseCoopers LLP, Independent Accountants. |

24.1 Power of Attorney (included on the signature page to this Registration Statement).

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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, thereunto duly authorized, in the City of San Francisco, State of California, on October 7, 2015.

DIGITAL REALTY TRUST, INC.

By: /s/ A. William Stein
A. William Stein
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints A. William Stein and Joshua A. Mills, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-8 and any and all amendments thereto, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing necessary or desirable to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|--|-----------------|
| /s/ DENNIS E. SINGLETON Dennis E. Singleton | Chairman of the Board | October 7, 2015 |
| /s/ A. WILLIAM STEIN A. William Stein | Chief Executive Officer and Director (Principal Executive Officer) | October 7, 2015 |
| /s/ ANDREW P. POWER Andrew P. Power | Chief Financial Officer (Principal Financial Officer) | October 7, 2015 |
| /s/ EDWARD F. SHAM Edward F. Sham | Sr. Vice President and Controller (Principal Accounting Officer) | October 7, 2015 |
| /s/ LAURENCE A. CHAPMAN Laurence A. Chapman | Director | October 7, 2015 |

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| | | |
|---|----------|-----------------|
| /s/ KATHLEEN EARLEY Kathleen Earley | Director | October 7, 2015 |
| /s/ KEVIN J. KENNEDY Kevin J. Kennedy | Director | October 7, 2015 |
| /s/ WILLIAM G. LAPERCH William G. LaPerch | Director | October 7, 2015 |
| /s/ ROBERT H. ZERBST Robert H. Zerbst | Director | October 7, 2015 |

Exhibit Index

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