

SPIRIT REALTY CAPITAL, INC.

Form 425

May 09, 2013

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): May 8, 2013

Cole Credit Property Trust II, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

000-51963
(Commission
File Number)

20-1676382
(I.R.S. Employer
Identification No.)

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2325 East Camelback Road, Suite 1100, Phoenix, Arizona 85016

(Address of principal executive offices)

(Zip Code)

(602) 778-8700

(Registrant's telephone number, including area code)

None

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

Item 1.01. Entry into a Material Definitive Agreement

Amendment to Merger Agreement

On May 8, 2013, Cole Credit Property Trust II, Inc., a Maryland corporation (the *Company*), Cole Operating Partnership II, LP, a Delaware limited partnership, Spirit Realty Capital, Inc., a Maryland corporation (*Spirit*) and Spirit Realty, L.P., a Delaware limited partnership, entered into an amendment (the *Amendment*) to that certain Agreement and Plan of Merger, dated January 22, 2013 (the *Merger Agreement*), which provides for the merger of Spirit with and into the Company (the *Merger*) with the Company continuing as the surviving corporation.

The Amendment provides for the cash-out of fractional shares of common stock, par value \$0.01 per share, of the Company (*Company Common Stock*) outstanding immediately prior to the effective time of the Merger. Pursuant to the Amendment, at the effective time of the Merger, (i) holders of fractional shares of Company Common Stock outstanding immediately prior to the effective time of the Merger and (ii) holders of common stock, par value \$0.01 per share, of Spirit (*Spirit Common Stock*) entitled to receive fractional share consideration pursuant to the Merger Agreement, will receive cash in an amount equal to such fractional part of a share of Company Common Stock multiplied by the product of (x) the volume weighted average price of Spirit Common Stock for the 10 trading days immediately prior to the closing date, starting with the opening of trading on the first trading day to the closing of the second to last trading day prior to the closing date, as reported by Bloomberg and (y) 0.525.

A copy of the Amendment is attached hereto as Exhibit 2.1. The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment.

Additional Information and Where to Find It

This Current Report on Form 8-K is not a substitute for the Registration Statement on Form S-4 (File No. 333-187122) that the Company filed with the Securities and Exchange Commission (the *SEC*) in connection with the proposed merger with Spirit, or the definitive joint proxy statement/prospectus sent to security holders of the Company and Spirit on or about April 2, 2013 seeking their approval of the proposed merger. The Company and Spirit will file supplemental materials with the SEC. INVESTORS AND SECURITY HOLDERS OF THE COMPANY AND SPIRIT ARE URGED TO CAREFULLY READ THE DEFINITIVE JOINT PROXY STATEMENT/PROSPECTUS DATED APRIL 2, 2013, WHICH WAS SENT TO SECURITY HOLDERS OF THE COMPANY AND SPIRIT ON OR ABOUT APRIL 2, 2013 (INCLUDING ALL SUPPLEMENTS THERETO), AS THEY CONTAIN IMPORTANT INFORMATION, INCLUDING DETAILED RISK FACTORS. Investors and security holders may obtain a free copy of the joint proxy statement/prospectus and other documents filed by the Company and Spirit with the SEC at the SEC's web site at www.sec.gov. Copies of the documents filed by the Company with the SEC will be available free of charge by directing a written request to Cole Credit Property Trust II, Inc., 2325 East Camelback Road, Suite 1100, Phoenix, Arizona, 85016, Attention: Investor Relations. Copies of the documents filed by Spirit with the SEC will be available free of charge on Spirit's website at www.spiritrealty.com or by directing a written request to Spirit Realty Capital, Inc., 16767 North Perimeter Drive, Suite 210, Scottsdale, Arizona 85260, Attention: Investor Relations.

Participants in the Solicitation

The Company and Spirit and their respective directors, executive officers and certain members of management and employees may be considered participants in the solicitation of proxies from the Company's stockholders and Spirit's stockholders in connection with the merger. Information regarding such persons and a description of their interests in the merger is available in the joint proxy statement/prospectus filed with the SEC on April 2, 2013.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

Forward-Looking Statements

Certain statements contained in this Current Report on Form 8-K, other than historical facts, may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), including statements regarding the Merger and the ability to consummate the Merger. The Company intends for all such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act and Section 21E of the Exchange Act, as applicable. Such statements include, in particular, statements about the Company's plans, strategies, and prospects and are subject to certain risks and uncertainties, as well as known and unknown risks, which could cause actual results to differ materially from those projected or anticipated. Therefore, such statements are not intended to be a guarantee of the Company's performance in future periods. Such forward-looking statements can generally be identified by the Company's use of forward-looking terminology such as may, will, would, could, should, expect, intend, anticipate, estimate, believe, continue, words. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date this report is filed with the SEC. The Company makes no representation or warranty (express or implied) about the accuracy of any such forward-looking statements contained in this Current Report on Form 8-K, and the Company does not intend, and undertakes no obligation, to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

**Exhibit
No.**

Description

2.1	First Amendment to Agreement and Plan of Merger, dated as of May 8, 2013, by and among Spirit Realty Capital, Inc., Spirit Realty, L.P., Cole Credit Property Trust II, Inc., and Cole Operating Partnership II, LP
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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.

Date: May 9, 2013

COLE CREDIT PROPERTY TRUST II, INC.

By: /s/ Gavin B. Brandon
Name: Gavin B. Brandon
Title: Vice President of Accounting

Principal Accounting Officer

EXHIBIT INDEX

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