

SPIRIT REALTY CAPITAL, INC.

Form 425

January 22, 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):**

**January 22, 2013**

**Spirit Realty Capital, Inc.**

(Exact name of registrant as specified in its charter)

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(State or other jurisdiction

(Commission

(IRS Employer

of incorporation)

File Number)

Identification No.)

**16767 North Perimeter Drive, Suite 210, Scottsdale, Arizona 85260**

(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (480) 606-0820**

N/A

(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 (see General Instructions A.2.):

- 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. Other Events.**

In connection with a presentation to analysts and investors, Spirit Realty Capital, Inc., a Maryland corporation (the Company), and Cole Credit Property Trust II, Inc., a Maryland corporation (Cole), will be providing certain information regarding the announcement of an Agreement and Plan of Merger (the Merger Agreement), dated as of January 22, 2013. The slides to be used in connection with this analyst and investor presentation are attached hereto as Exhibit 99.1.

This Item 7.01 and the attached Exhibit 99.1 are provided under Item 7.01 of Form 8-K and are furnished to, and shall not be deemed to be filed with, the Securities and Exchange Commission (the SEC).

### **Item 8.01. Other Events.**

On January 22, 2013, the Company issued a joint press release with Cole announcing the execution of the Merger Agreement. A copy of the joint press release is attached hereto as Exhibit 99.2.

The information required by Item 1.01, including a copy of the Merger Agreement, will be filed in a separate Current Report on Form 8-K.

### **Additional Information about the Proposed Transaction and Where to Find It**

In connection with the proposed transaction, Cole expects to file with the SEC a registration statement on Form S-4 that will include a joint proxy statement of Cole and the Company that also constitutes a prospectus of the Company. Cole and the Company also plan to file other relevant documents with the SEC regarding the proposed transaction. INVESTORS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC IF AND WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. You may obtain a free copy of the joint proxy statement/prospectus (if and when it becomes available) and other relevant documents filed by the Company and Cole with the SEC at the SEC's website at [www.sec.gov](http://www.sec.gov). Copies of the documents filed by the Company with the SEC will be available free of charge on the Company's website at [www.spiritrealty.com](http://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. Copies of the documents filed by Cole 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.

The Company and Cole and their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. You can find information about the Company's executive officers and directors in the Company's final prospectus filed with the SEC on September 21, 2012. You can find information about Cole's executive officers and directors in Cole's definitive proxy statement filed with the SEC on April 13, 2012. Additional information regarding the interests of such potential participants will be included in the joint proxy statement/prospectus and other relevant documents filed with the SEC if and when they become available. You may obtain free copies of these documents from the Company or Cole using the sources indicated above.

This document 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**

In addition to historical information, this Current Report on Form 8-K (including information included or incorporated by reference herein) contains forward-looking statements within the meaning of Section 27A of the U.S. Securities Act of 1933, as amended, and Section 21E of the U.S. Securities Exchange Act of 1934, as amended. These forward-looking statements, which are based on current expectations, estimates and projections about the industry and markets in which the Company and Cole operate and beliefs of and assumptions made by the Company management and Cole management, involve risks and uncertainties that could significantly affect the financial results of the Company or Cole or the combined company. Words such as expects, anticipates, intends, plans, believes, projects, seeks, estimates, variations of such words or similar expressions are intended to identify such forward-looking statements, which generally are not historical in nature.

Such forward-looking statements include, but are not limited to, statements about the benefits of the business combination transaction involving the Company and Cole, including future financial and operating results, the combined company's plans, objectives, expectations and intentions. All statements that address operating performance, events or developments that we expect or anticipate will occur in the future including statements relating to rent and occupancy growth, changes in sales or contribution volume of developed properties, general conditions in the geographic areas where we operate and the availability of capital are forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions that are difficult to predict. Although we believe the expectations reflected in any forward-looking statements are based on reasonable assumptions, we can give no assurance that our expectations will be attained and therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. Some of the factors that may affect outcomes and results include, but are not limited to: (i) national, international, regional and local economic climates, (ii) changes in financial markets, interest rates, credit spreads, and foreign currency exchange rates, (iii) changes in the real estate markets, (iv) continued ability to source new investments, (v) increased or unanticipated competition for our properties, (vi) risks associated with acquisitions, (vii) maintenance of real estate investment trust status, (viii) availability of financing and capital, (ix) changes in demand for developed properties, (x) risks associated with achieving expected revenue synergies or cost savings, (xi) risks associated with the ability to consummate the merger and the timing of the closing of the merger, and (xii) those additional risks and factors discussed in reports filed with the SEC by the Company and Cole from time to time. Neither the Company nor Cole undertakes any duty to update and revise statements contained in these materials based on new information or otherwise.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits. The following documents have been filed as exhibits to this report and are incorporated by reference herein as described above.

Exhibit No.	Description
99.1	Joint Investor Presentation
99.2	Joint Press Release issued by Spirit Realty Capital, Inc., and Cole Credit Property Trust II, Inc., on January 22, 2013

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: January 22, 2013

SPIRIT REALTY CAPITAL, INC.

By: /s/ Michael A. Bender  
Michael A. Bender  
*Chief Financial Officer, Senior Vice President, Assistant  
Secretary and Treasurer*

**EXHIBIT INDEX**

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