

ACADIA REALTY TRUST
Form 10-K/A
May 12, 2006
United States

Securities and Exchange Commission

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2005

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 1-12002

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland

23-2715194

(State of incorporation)

(I.R.S. employer identification no.)

1311 Mamaroneck Avenue, Suite 260

White Plains, NY 10605

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(Address of principal executive offices)

(914) 288-8100

(Registrant's telephone number)

Securities registered pursuant to Section 12(b) of the Act:

Common Shares of Beneficial Interest, \$.001 par value

(Title of Class)

New York Stock Exchange

(Name of Exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Securities Act.

Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer (as defined in Rule 12b-2 of the Act).

Large Accelerated Filer

Accelerated Filer

Non-accelerated Filer

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act)

Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the Registrant's most recently completed second fiscal quarter was \$586.4 million, based on a price of \$18.65 per share, the average sales price for the Registrant's shares of beneficial interest on the New York Stock Exchange on that date.

The number of shares of the registrant's Common Shares of Beneficial Interest outstanding on March 15, 2006 was 31,758,241.

DOCUMENTS INCORPORATED BY REFERENCE

None

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (Amendment No. 1) is being filed by Acadia Realty Trust (the Company) to amend a portion of Item 5 of Part II of our Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed with the Securities and Exchange Commission on March 16, 2006 (the Initial Report). Amendment No. 1 includes a correction of a calculation error under the heading (d) Securities authorized for issuance under equity compensation plans in a chart included in Part II, Item 5 (Market for Registrant's Common Equity, Related to Shareholder Matters and Issuer Purchases of Equity Securities) of the Initial Report. Due to a calculation error, we overstated the figures in the column of the chart titled (c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a). Instead of 3,021,053 securities remaining available for future issuance, the correct figure is 674,024, as disclosed below in this Amendment No. 1. We have also modified the related disclosure in footnote (1) to the chart. Except for the changes noted above, this Amendment No. 1 does not amend any information contained in the Initial Report nor does it reflect any events occurring since the filing of the Initial Report.

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We previously reported this revision in our Current Report on Form 8-K dated May 8, 2006.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED SHAREHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

(a) Market Information

The following table shows, for the period indicated, the high and low sales price for the Common Shares as reported on the New York Stock Exchange, and cash dividends paid during the two years ended December 31, 2005 and 2004:

| <u>Quarter Ended</u> | <u>High</u> | <u>Low</u> | <u>Dividend Per Share</u> |
|----------------------|-------------|------------|-------------------------------|
| <u>2005</u> | | | |
| March 31, 2005 | \$ 16.60 | \$ 15.60 | \$ 0.1725 |
| June 30, 2005 | 18.65 | 15.53 | 0.1725 |
| September 30, 2005 | 19.89 | 17.45 | 0.1725 |
| December 31, 2005 | 20.76 | 16.66 | 0.1850 |
| <u>2004</u> | | | |
| March 31, 2004 | \$ 15.00 | \$ 12.36 | \$ 0.1600 |
| June 30, 2004 | 14.30 | 11.38 | 0.1600 |
| September 30, 2004 | 15.11 | 13.03 | 0.1600 |
| December 31, 2004 | 16.49 | 14.70 | 0.1725 |

At March 15, 2006, there were 349 holders of record of the Company's Common Shares.

(b) Dividends

We have determined that for 2005, 95% of the total dividends distributed to shareholders represented ordinary income, 3% represented unrecaptured section 1250 gain and 2% represented nontaxable return of capital. Our cash flow is affected by a number of factors, including the revenues received from rental properties, our operating expenses, the interest expense on its borrowings, the ability of lessees to meet their obligations to us and unanticipated capital expenditures. Future dividends paid by us will be at the discretion of the Trustees and will depend on our actual cash flows, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and such other factors as the Trustees deem relevant.

(c) Issuer purchases of equity securities

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. Through March 15, 2006, we had repurchased 2.1 million Common Shares at a total cost of \$11.7 million of which 2.0 million of these Common Shares have been subsequently reissued. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. There were no Common Shares repurchased by us during the fiscal year ended December 31, 2005.

(d) Securities authorized for issuance under equity compensation plans

The following table provides information related to our 1999 Share Incentive Plan (the 1999 Plan) and 2003 Share Incentive Plan (the 2003 Plan) as of December 31, 2005:

Equity Compensation Plan Information

| | (a) Number of securities to be issued upon exercise of outstanding options, warrants and rights | (b) Weighted- average exercise price of outstanding options, warrants and rights | (c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a) |
|---|---|--|--|
| Equity compensation plans approved by security holders | 477,242 | \$ 8.03 | 674,024 (1) |
| Equity compensation plans not approved by security holders | | | |
| Total | 477,242 | \$ 8.03 | 674,024 (1) |

Notes:

(1) The 1999 and 2003 Plans authorize the issuance of options equal to up to a total of 12% of the total Common Shares outstanding from time to time on a fully diluted basis. However, not more than 4,000,000 of the Common Shares in the aggregate may be issued pursuant to the exercise of options and no participant may receive more than 5,000,000 Common Shares during the term of the 1999 and 2003 Plans. Remaining available is based on 31,542,942 outstanding Common Shares and 653,360 OP Units as of December 31, 2005, less the issuance of a total of 489,840 restricted shares granted, as well as 2,222,450 options granted and exercised, through the same date.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENTS SCHEDULES

(a) Financial Statements Form 10-K. The following consolidated financial information was previously filed with the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2005, filed with the SEC on March 16, 2006.

- Report of Registered Public Accounting Firm for the year ended December 31, 2005
- Report of Registered Public Accounting Firm for the years ended December 31, 2004 and 2003
- Consolidated Balance Sheets as of December 31, 2005 and 2004
- Consolidated Statements of Income for the years ended December 31, 2005, 2004 and 2003
- Consolidated Statements of Shareholders' Equity for the years ended December 31, 2005, 2004 and 2003
- Consolidated Statements of Cash Flows for the years ended December 31, 2005, 2004 and 2003
- Notes to Consolidated Financial Statements
- Schedule III Real Estate and Accumulated Depreciation

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| Exhibit No. | Description |
|-------------|---|
| 3.1 | Declaration of Trust of the Company, as amended (1) |
| 3.2 | Fourth Amendment to Declaration of Trust (4) |
| 3.3 | Amended and Restated By-Laws of the Company (22) |
| 4.1 | Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (14) |
| 10.1 | 1999 Share Option Plan (8) (20) |
| 10.2 | 2003 Share Option Plan (16) (20) |
| 10.3 | Form of Share Award Agreement (17) (21) |
| 10.4 | Form of Registration Rights Agreement and Lock-Up Agreement (18) |
| 10.5 | Registration Rights and Lock-Up Agreement (RD Capital Transaction) (11) |
| 10.6 | Registration Rights and Lock-Up Agreement (Pacesetter Transaction) (11) |
| 10.7 | Contribution and Share Purchase Agreement dated as of April 15, 1998 among Mark Centers Trust, Mark Centers Limited Partnership, the Contributing Owners and Contributing Entities named therein, RD Properties, L.P. VI, RD Properties, L.P. VIA and RD Properties, L.P. VIB (9) |
| 10.8 | Agreement of Contribution among Acadia Realty Limited Partnership, Acadia Realty Trust and Klaff Realty, LP and Klaff Realty, Limited (18) |
| 10.9 | Employment agreement between the Company and Kenneth F. Bernstein (6) (21) |
| 10.11 | Amendment to employment agreement between the Company and Kenneth F. Bernstein (18) (21) |
| 10.12 | First Amendment to Employment Agreement between the Company and Kenneth Bernstein dated as of January 1, 2001 (12) (21) |
| 10.14 | Letter of employment offer between the Company and Michael Nelsen, Sr. Vice President and Chief Financial Officer dated February 19, 2003 (15) (21) |
| 10.15 | Severance Agreement between the Company and Joel Braun, Sr. Vice President, dated April 6, 2001 (13) (21) |
| 10.16 | Severance Agreement between the Company and Joseph Hogan, Sr. Vice President, dated April 6, 2001 (13) (21) |
| 10.17 | Severance Agreement between the Company and Joseph Napolitano, Sr. Vice President dated April 6, 2001 (18) (21) |
| 10.18 | Severance Agreement between the Company and Robert Masters, Sr. Vice President and General Counsel dated January 2001 (18) (21) |
| 10.19 | Severance Agreement between the Company and Michael Nelsen, Sr. Vice President and Chief Financial Officer dated February 19, 2003 (15) (21) |
| 10.20 | Secured Promissory Note between RD Absecon Associates, L.P. and Fleet Bank, N.A. dated February 8, 2000 (7) |
| 10.21 | Promissory Note between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18) |
| 10.22 | Open-End Mortgage, Assignment of Leases and Rents, and Security Agreement between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18) |
| 10.23 | Promissory Note between Merrillville Realty, L.P. and Sun America Life Insurance Company dated July 7, 1999 (7) |
| 10.24 | Secured Promissory Note between Acadia Town Line, LLC and Fleet Bank, N.A. dated March 21, 1999 (7) |
| 10.25 | Promissory Note between RD Village Associates Limited Partnership and Sun America Life Insurance Company Dated September 21, 1999 (7) |
| 10.26 | Amended and Restated Mortgage Note between Port Bay Associates, LLC and Fleet Bank, N.A. dated July 19, 2000 (3) |
| 10.27 | Mortgage and Security Agreement between Port Bay Associates, LLC and Fleet Bank, N.A. dated July 19, 2000 (10) |
| 10.28 | Mortgage Note between Port Bay Associates, LLC and Fleet Bank, N.A. dated December 1, 2003 (18) |
| 10.29 | Mortgage and Security Agreement, and Assignment of Leases and Rents between Port Bay Associates, LLC and Fleet Bank, N.A. dated December 1, 2003 (18) |
| 10.30 | Note Modification Agreement between Port Bay Associates, LLC and Fleet Bank, N.A. dated December 1, 2003 (18) |
| 10.31 | Amended and Restated Promissory Note between Acadia Realty L.P. and Metropolitan Life Insurance Company for \$25.2 million dated October 13, 2000 (10) |
| 10.32 | Amended and Restated Mortgage, Security Agreement and Fixture Filing between Acadia Realty L.P. and Metropolitan Life Insurance Company dated October 13, 2000 (10) |
| 10.33 | Term Loan Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10) |
| 10.34 | Mortgage Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10) |
| 10.35 | Promissory Note between RD Whitegate Associates, L.P. and Bank of America, N.A. dated December 22, 2000 (10) |
| 10.36 | Promissory Note between RD Columbia Associates, L.P. and Bank of America, N.A. dated December 22, 2000 (10) |
| 10.37 | Term Loan Agreement dated as of December 28, 2001, among Fleet National Bank and RD Branch Associates, L.P., et al (13) |
| 10.38 | Term Loan Agreement dated as of December 21, 2001, among RD Woonsocket Associates Limited Partnership, et al. and The Dime Savings Bank of New York, FSB (13) |

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| Exhibit No. | Description |
|-------------|---|
| 10.39 | Option Extension of Term Loan as of December 19, 2003 between RD Woonsocket Associates Limited Partnership, et al. and Washington Mutual Bank, FA (18) |
| 10.40 | Revolving Loan Promissory Note dated as of November 22, 2002, among RD Elmwood Associates, L.P. and Washington Mutual Bank, FA (15) |
| 10.41 | Revolving Loan Agreement dated as of November 22, 2002, among RD Elmwood Associates, L.P. and Washington Mutual Bank, FA (15) |
| 10.42 | Mortgage Agreement dated as of November 22, 2002, among RD Elmwood Associates, L.P. and Washington Mutual Bank, FA (15) |
| 10.43 | Note Modification Agreement between RD Elmwood Associates, L.P. and Washington Mutual Bank, FA dated December 19, 2003 (18) |
| 10.44 | Prospectus Supplement Regarding Options Issued under the Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan (19) (21) |
| 10.45 | Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan Deferral and Distribution Election Form (19) (21) |
| 10.46 | Amended, Restated And Consolidated Promissory Note between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19) |
| 10.47 | Amended, Restated And Consolidated Mortgage, Assignment Of Leases And Rents And Security Agreement between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19) |
| 10.48 | Amended and Restated Term Loan Agreement between Fleet National Bank and Heathcote Associates, L.P., Acadia Town Line, LLC, RD Branch Associates, L.P., RD Abington Associates Limited Partnership, And RD Methuen Associates Limited Partnership dated September 30, 2004 (19) |
| 10.49 | Mortgage Modification Agreement between Fleet National Bank and Acadia Town Line, LLC dated September 30, 2004 (19) |
| 10.49a | Mortgage Modification Agreement between Fleet National Bank and Heathcote Associates, L.P. dated September 30, 2004 (19) |
| 10.49b | Mortgage Modification Agreement between Fleet National Bank and RD Branch Associates dated September 30, 2004 (19) |
| 10.49c | Mortgage Modification Agreement between Fleet National Bank and RD Methuen Associates dated September 30, 2004 (19) |
| 10.49d | Mortgage Modification Agreement between Fleet National Bank and RD Abington Associates Limited Partnership dated September 30, 2004 (19) |
| 10.50 | Revolving Loan Agreement between Fleet National Bank and The Bank of China and RD Absecon Associates, L.P., RD Bloomfield Associates, L.P., RD Hobson Associates, L.P., RD Village Associates, L.P., and RD Woonsocket Associates L.P. dated May 26, 2005 (22) |
| 10.51 | Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia Crescent Plaza, LLC and Greenwich Capital Financial Products, Inc. dated August 31, 2005 (22) |
| 10.52 | Mortgage, Assignment of Leases and Rents and Security Agreement between Pacesetter/Ramapo Associates and Greenwich Capital Financial Products, Inc. dated October 17, 2005 (22) |
| 10.53 | Loan Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22) |
| 10.54 | Mortgage and Security Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22) |
| 21 | List of Subsidiaries of Acadia Realty Trust (22) |
| 23.1 | Consent of Registered Public Accounting Firm to Form S-3 and Form S-8 (22) |
| 23.2 | Consent of former Registered Public Accounting Firm to Form S-3 and Form S-8 (22) |
| 31.1 | Certification of Chief Executive Officer pursuant to rule 13a 14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (23) |
| 31.2 | Certification of Chief Financial Officer pursuant to rule 13a 14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (23) |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (previously filed) |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (previously filed) |
| 99.1 | Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11) |
| 99.2 | First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11) |
| 99.3 | Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18) |
| 99.4 | Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18) |
| 99.5 | Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (2) |
| 99.6 | Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (18) |

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Notes:

- (1) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal Year ended December 31, 1994
 - (2) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended June 30, 1997
 - (3) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
 - (4) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
 - (5) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-11 (File No.33-60008)
 - (6) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 1998
 - (7) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 1999
 - (8) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-8 filed September 28, 1999
 - (9) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 8-K filed on April 20, 1998
 - (10) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 10-K filed for the fiscal year ended December 31, 2000
 - (11) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-3 filed on March 3, 2000
 - (12) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2001
 - (13) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2001
 - (14) Incorporated by reference to the copy thereof filed as an Exhibit to Yale University's Schedule 13D filed on September 25, 2002
 - (15) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2002
 - (16) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Definitive Proxy Statement on Schedule 14A filed April 29, 2003.
 - (17) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on July 2, 2003
 - (18) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2003
 - (19) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
 - (20) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
 - (21) Management contract or compensatory plan or arrangement.
 - (22) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2005.
 - (23) Filed herewith.
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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

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ACADIA REALTY TRUST
(Registrant)

Date: May 12, 2006

By: /s/ Michael Nelsen

Name: Michael Nelsen

Title: Sr. Vice President and Chief Financial Officer: