

GETTY REALTY CORP /MD/  
Form 8-K  
May 17, 2010

**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 13, 2010**

**GETTY REALTY CORP.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction  
of incorporation)

**001-13777**  
(Commission  
File Number)

**11-3412575**  
(IRS Employer  
Identification No.)

**125 Jericho Turnpike, Suite 103, Jericho, New York, 11753**

(Address of principal executive offices) (ZIP Code)

Registrant's telephone number, including area code: **(516) 478-5400**

(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))
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## Section 1 Registrant's Business and Operations

### Item 1.01. Entry into a Material Definitive Agreement

On May 13, 2010, Getty Realty Corp. (the Company) entered into an Underwriting Agreement (the Underwriting Agreement) with J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters listed on Schedule 1 thereto (the Underwriters), pursuant to which the Company agreed to offer and sell 4,500,000 shares of common stock, \$0.01 par value per share, of the Company (the Common Stock). Pursuant to the terms of the Underwriting Agreement, the Company granted the Underwriters a 30-day option to purchase up to an additional 675,000 shares of Common Stock to cover over-allotments, if any. The net proceeds of the offering to the Company, after deducting the underwriting discount and estimated offering expenses, are expected to be approximately \$94.0 million, exclusive of any proceeds attributable to the underwriters possible exercise of their over-allotment option. The Company expects to use the net proceeds of the offering for the acquisition of properties in the gas station and convenience store sector, repayment or refinancing of outstanding indebtedness under its credit agreement and general corporate purposes. The Company may re-borrow amounts repaid under its credit agreement to fund future property acquisitions and for other general corporate purposes. While the Company evaluates acquisition and investment opportunities from time to time, it currently has no binding commitments or agreements relating to any such acquisition or investment. The closing of this offering is expected to occur on or about May 19, 2010, subject to customary closing conditions.

The Company made certain customary representations, warranties and covenants concerning the Company and the registration statement in the Underwriting Agreement and also agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended. A copy of the Underwriting Agreement is filed as Exhibit 1.1 to this Current Report on Form 8-K and incorporated herein by reference. The descriptions of the material terms of the Underwriting Agreement in this Item 1.01 are qualified in their entirety by reference to Exhibit 1.1.

J. P. Morgan Securities Inc. acted as sole bookrunner and sole lead arranger in connection with the Company's \$175.0 million amended and restated senior unsecured credit agreement (the Credit Agreement). In addition, affiliates of the Underwriters are lenders under the Credit Agreement and will receive a portion of the net proceeds from this offering to the extent that net proceeds are used to pay down the Credit Agreement.

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements, which are based on certain assumptions and describe future plans, strategies and expectations of the Company, are generally identifiable by use of the words believes, expects, plans, projects, estimates, predicts and similar expressions or future or conditional verbs such as will, should, would, may and are generally forward-looking in nature and are not historical facts and include our statements relating to our intended use of proceeds for the offering. The forward-looking statements contained in this Current Report on Form 8-K, including with respect to the Company's planned issuance of the shares of Common Stock (including the over-allotment option) are subject to various risks and uncertainties. Although the Company believes the expectations reflected in such forward-looking statements are based on reasonable assumptions, there can be no assurance that its expectations will be achieved. Certain factors that could cause actual results to differ materially from the Company's expectations include market conditions and the ability to complete the proposed offering; changes in general or regional economic conditions; the length and severity of the recent economic downturn; the Company's ability to timely lease or re-lease space at current or anticipated rents; changes in interest rates; changes in operating costs; the Company's ability to complete current and future acquisitions; the Company's ability to obtain additional financing; the Company's ability to manage its current debt levels and repay or refinance its indebtedness upon maturity or other required payment dates; the Company's ability to obtain debt and/or financing on attractive terms, or at all and other risks detailed in the Company's Annual Report on Form 10-K and described from time to time in the Company's filings with the Securities and Exchange Commission. Many of these factors are beyond the Company's ability to control or predict. Forward-looking statements are not guarantees of performance. Except for our ongoing obligations to disclose material information under the federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events unless required by

law. For any forward-looking

statements contained in any document, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

**Section 9 Financial Statements and Exhibits**

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 1.1 Underwriting Agreement, dated May 13, 2010, between the Company, and J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters listed on Schedule 1 thereto.
  
- 5.1 Opinion of DLA Piper LLP (US) regarding the legality of the Common Stock.
  
- 8.1 Opinion of DLA Piper LLP (US) regarding certain tax matters.
  
- 99.1 Press release announcing the pricing of the underwritten offering dated May 13, 2010.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

GETTY REALTY CORP.

By: /s/ Thomas J. Stirweis  
Name:  
Thomas J. Stirweis  
Title: Vice President, Treasurer  
and  
Chief Financial Officer

Date: May 17, 2010

**INDEX TO EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
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Exhibit 8.1	Opinion of DLA Piper LLP (US) regarding certain tax matters.
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