

REGENCY CENTERS CORP
Form 10-K/A
March 31, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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, 2008

or

☐ **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 1-12298

REGENCY CENTERS CORPORATION

(Exact name of registrant as specified in its charter)

FLORIDA
(State or other jurisdiction of
incorporation or organization)

59-3191743
(I.R.S. Employer
identification No.)

One Independent Drive, Suite 114
Jacksonville, Florida 32202
(Address of principal executive offices) (zip code)

(904) 598-7000
(Registrant's telephone No.)

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

Title of each class	Name of each exchange on which registered
Common Stock, \$.01 par value	New York Stock Exchange
7.45% Series 3 Cumulative Redeemable Preferred Stock, \$.01 par value	New York Stock Exchange
7.25% Series 4 Cumulative Redeemable Preferred Stock, \$.01 par value	New York Stock Exchange
6.70% Series 5 Cumulative Redeemable Preferred Stock, \$.01 par value	New York Stock Exchange

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** ☐

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Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the 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, 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. ☐

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. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company. **YES** ☐ **NO** ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter. \$4,258,715,940

The number of shares outstanding of the registrant's voting common stock was 70,020,613 as of March 13, 2009.

Documents Incorporated by Reference

Portions of the registrant's proxy statement in connection with its 2009 Annual Meeting of Stockholders are incorporated by reference in Part III.

EXPLANATORY NOTE

The Registrant is filing this Amendment No. 1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2008 (Form 10-K) to incorporate into the Form 10-K the unaudited combined financial statements of Regency Retail Partners, a significant fifty percent-or-less owned person accounted for by the equity method by the Registrant, which is required to be filed by the Securities and Exchange Commission (SEC) pursuant to Rule 3-09 of Regulation S-X. The financial statements of Regency Retail Partners were not available at the time the Registrant filed its Form 10-K on March 17, 2009.

Since the Registrant has amended the Form 10-K as described above, a currently-dated consent from KPMG LLP has been provided, which is required to be filed by the SEC pursuant to Item 601(b)(23) of Regulation S-K.

Pursuant to the rules of the Securities Exchange Act of 1934, as amended (the Exchange Act) Rule 12b-15, the Registrant has also amended the Form 10-K to provide currently-dated certifications from the Registrant's chief executive officer and chief financial officer, as required by Exchange Act Rule 13a-14(a) or Rule 15d-14(a), as adopted under Section 302 of the Sarbanes-Oxley Act of 2002, and Section 1350 of Title 18 of the United States Code, as adopted under Section 906 of the Sarbanes-Oxley Act of 2002.

Except for the filing of the financial statements under Rule 3-09 of Regulation S-X, revised consent, and revised certifications, this Amendment No. 1 does not amend the Registrant's previously filed Form 10-K.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) Financial Statements and Financial Statement Schedules:

Regency's 2008 financial statements and financial statement schedule, together with the reports of KPMG LLP are listed on the index immediately preceding the financial statements in Item 8, Consolidated Financial Statements and Supplemental Data. ⁽¹⁾

(b) Exhibits:

2. (a) Purchase and Sale Agreement among Macquarie CountryWide-Regency II, LLC, Macquarie CountryWide Trust, Regency Centers Corporation, USRP Texas GP, LLC, Eastern Shopping Center Holdings, LLC, First Washington Investment I, LLC and California Public Employees Retirement System dated February 14, 2005 (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q filed May 10, 2005).
3. Articles of Incorporation and Bylaws
 - (i) Restated Articles of Incorporation of Regency Centers Corporation (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed February 19, 2008).
 - (ii) Amended and Restated Bylaws of Regency Centers Corporation (incorporated by reference to Exhibit 3.2(b) to the Company's Form 8-K report filed November 7, 2008).
4. (a) See exhibits 3(i) and 3(ii) for provisions of the Articles of Incorporation and Bylaws of Regency Centers Corporation defining rights of security holders.
- (b) Indenture dated March 9, 1999 between Regency Centers, L.P., the guarantors named therein and First Union National Bank, as trustee (incorporated by reference to Exhibit 4.1 to the registration statement on Form S-3 of Regency Centers, L.P., No. 333-72899).

⁽¹⁾ Filed on March 17, 2009 as an exhibit to Form 10-K for the year ended December 31, 2008.

- (c) Indenture dated December 5, 2001 between Regency Centers, L.P., the guarantors named therein and First Union National Bank, as trustee (incorporated by referenced to Exhibit 4.4 of Form 8-K of Regency Centers, L.P. filed December 10, 2001, File No. 0-24763).
- (i) First Supplemental Indenture dated as of June 5, 2007 among Regency Centers, L.P., Regency as guarantor and U.S. Bank National Association, as successor to Wachovia Bank, National Association (formerly known as First Union National Bank), as Trustee (incorporated by reference to Exhibit 4.1 to Regency Centers, L.P. s Form 8-K filed June 5, 2007).
- (d) Indenture dated July 18, 2005 between Regency Centers, L.P., the guarantors named therein and Wachovia Bank, National Association, as trustee (incorporated by referenced to Exhibit 4.1 of Form S-4 of Regency Centers, L.P. filed August 5, 2005, No. 333-127274).

10. Material Contracts

- (a) Regency Centers Corporation Long Term Omnibus Plan (incorporated by reference to Exhibit 10.9 to the Company s Form 10-Q filed May 8, 2008).
- ~ (b) Form of Stock Rights Award Agreement pursuant to the Company s Long-Term Omnibus Plan (incorporated by reference to Exhibit 10(b) to the Company s Form 10-K filed March 10, 2006).
- ~ (i) Form of 409A Amendment to Stock Rights Award Agreements.⁽¹⁾
- ~ (c) Form of Nonqualified Stock Option Agreement pursuant to the Company s Long-Term Omnibus Plan (incorporated by reference to Exhibit 10(c) to the Company s Form 10-K filed March 10, 2006).
- ~ (i) Form of 409A Amendment to Stock Option Agreements. ⁽¹⁾
- ~ (d) Stock Rights Award Agreement dated as of December 17, 2002 between the Company and Martin E. Stein, Jr. (incorporated by reference to Exhibit 10(d) to the Company s Form 10-K filed March 12, 2004).
- ~ (e) Stock Rights Award Agreement dated as of December 17, 2002 between the Company and Mary Lou Fiala (incorporated by reference to Exhibit 10(e) to the Company s Form 10-K filed March 12, 2004).
- ~ (f) Stock Rights Award Agreement dated as of December 17, 2002 between the Company and Bruce M. Johnson (incorporated by reference to Exhibit 10(f) to the Company s Form 10-K filed March 12, 2004).
- ~* (i) Form of Director/Officer Indemnification Agreement.
- ~ (j) Amended and Restated Deferred Compensation Plan dated May 6, 2003 (incorporated by reference to Exhibit 10(k) to the Company s Form 10-K filed March 12, 2004).
- (l) Fourth Amended and Restated Agreement of Limited Partnership of Regency Centers, L.P., as amended (incorporated by reference to Exhibit 10(m) to the Company s Form 10-K filed March 12, 2004).
- (i) Amendment to Fourth Amended and Restated Agreement of Limited Partnership of Regency Centers, L.P. relating to 6.70% Series 5 Cumulative Redeemable Preferred Units, effective as of July 28, 2005 (incorporated by reference to Exhibit 3.3 to the Company s Form 8-K filed August 1, 2005).
- ~ Management contract or compensatory plan or arrangement filed pursuant to S-K 601(10)(iii)(A).

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Included as an exhibit to Pre-effective Amendment No. 2 to the Company's registration statement on Form S-11 filed October 5, 1993 (33-67258), and incorporated herein by reference.

- ⁽¹⁾ Filed on March 17, 2009 as an exhibit to Form 10-K for the year ended December 31, 2008.

- (ii) Amended and Restated Amendment dated January 1, 2008 to Fourth Amended and Restated Agreement of Limited Partnership Relating to 7.45% Series 3 Cumulative Redeemable Preferred Units (incorporated by reference to Exhibit 10.1 of Regency Centers, L.P.'s Form 8-K filed January 7, 2008).
 - (iii) Amended and Restated Amendment dated January 1, 2008 to Fourth Amended and Restated Agreement of Limited Partnership Relating to 7.25% Series 4 Cumulative Redeemable Preferred Units (incorporated by reference to Exhibit 10.1 of Regency Centers, L.P.'s Form 8-K filed January 7, 2008).
- (m) Second Amended and Restated Credit Agreement dated as of February 9, 2007 by and among Regency Centers, L.P., Regency, each of the financial institutions initially a signatory thereto, and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q filed May 9, 2007).
 - (i) First Amendment to Second Amended and Restated Credit Agreement (incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q filed May 8, 2008).
- (n) Credit Agreement dated as of March 5, 2008 by and among Regency Centers, L.P., Regency, each of the financial institutions party thereto and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q filed May 8, 2008).
- (o) 2008 Amended and Restated Severance and Change of Control Agreement dated as of January 1, 2008 by and between the Company and Martin E. Stein, Jr. (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed January 7, 2008).
- ~ (p) 2008 Amended and Restated Severance and Change of Control Agreement dated as of January 1, 2008 by and between the Company and Mary Lou Fiala (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed January 7, 2008).
- ~ (q) 2008 Amended and Restated Severance and Change of Control Agreement dated as of January 1, 2008 by and between the Company and Bruce M. Johnson (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed January 7, 2008).
- ~ (r) 2008 Amended and Restated Severance and Change of Control Agreement effective January 1, 2008 by and between the Company and Brian M. Smith (incorporated by reference to Exhibit 10.4 of the Company's Form 8-K filed January 7, 2008).
- ~ (i) Addendum No. 1 dated March 17, 2008 to 2008 Amended and Restated Severance and Control Agreement dated as of January 1, 2008 by and between Regency Centers Corporation and Brian M. Smith (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed March 21, 2008).
- ~ (s) Personalized Relocation Terms Document for Brian M. Smith dated March 17, 2008 (incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed March 21, 2008).
- ~ (t) Regency Centers Corporation 2005 Deferred Compensation Plan (incorporated by reference to Exhibit 10(s) to the Company's Form 8-K filed December 21, 2004).
 - (i) First Amendment to Regency Centers Corporation 2005 Deferred Compensation Plan dated December, 2005 (incorporated by reference to Exhibit 10(q)(i) to the Company's Form 10-K filed March 10, 2006).
- (u) Amended and Restated Limited Liability Company Agreement of Macquarie CountryWide-Regency II, LLC dated as of June 1, 2005 by and among Regency Centers, L.P., Macquarie CountryWide (US) No. 2 LLC, Macquarie-Regency Management, LLC, Macquarie CountryWide (US) No. 2 Corporation and Macquarie CountryWide Management Limited (incorporated by reference to Exhibit 10.3 to the Company's Form 10-Q filed August 8, 2005).

~ Management contract or compensatory plan or arrangement filed pursuant to S-K 601(10)(iii)(A).

- (v) Purchase Agreement and Amendment to Amended and Restated Limited Liability Agreement relating to Macquarie CountryWide-Regency II, L.L.C. dated as of January 13, 2006 among Macquarie CountryWide (U.S.) No. 2 LLC, Regency Centers, L.P., and Macquarie-Regency Management, LLC (incorporated by reference to Exhibit 10.1 to Form 10-Q filed May 8, 2006).
- (w) Limited Partnership Agreement dated as of December 21, 2006 of RRP Operating, LP (incorporated by reference to Exhibit 10(u) to Regency s Form 10-K filed February 27, 2007).

- 21. Subsidiaries of the Registrant. ⁽¹⁾
- 23. Consent of KPMG LLP. ⁽²⁾
- 31.1 Rule 13a-14 Certification of Chief Executive Officer. ⁽²⁾
- 31.2 Rule 13a-14 Certification of Chief Financial Officer. ⁽²⁾
- 32.1 Section 1350 Certification of Chief Executive Officer. ⁽²⁾
- 32.2 Section 1350 Certification of Chief Financial Officer. ⁽²⁾
- 99. Financial Statements of Regency Retail Partners. ⁽²⁾

⁽¹⁾ Filed on March 17, 2009 as an exhibit to Form 10-K for the year ended December 31, 2008.

⁽²⁾ Filed herein.

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, thereunto duly authorized.

REGENCY CENTERS CORPORATION

/s/ Martin E. Stein, Jr.

Martin E. Stein, Jr., Chairman of the Board and

Chief Executive Officer

March 31, 2009