

DIGITAL RIVER INC /DE  
Form S-8  
September 06, 2001

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As filed with the Securities and Exchange Commission on September 6, 2001

Registration No. 333-

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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### DIGITAL RIVER, INC.

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of Incorporation)

**41-1901640**  
(I.R.S. Employer Identification No.)

**9625 West 76<sup>th</sup> Street, Suite 150**  
**Eden Prairie, Minnesota 55344**  
**(952) 253-1234**

(Address of principal executive offices)

**1998 Stock Option Plan**  
**1999 Stock Option Plan**  
**2000 Employee Stock Purchase Plan**

(Full title of the plan)

**Joel A. Ronning**  
**Chief Executive Officer**  
**9625 West 76<sup>th</sup> Street, Suite 150**  
**Eden Prairie, Minnesota 55344**  
**(952) 253-1234**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Copies to:

**Michael J. Sullivan, Esq.**  
**Virginia P. Edwards, Esq.**  
**Cooley Godward LLP**  
**One Maritime Plaza, 20<sup>th</sup> Floor**  
**San Francisco, CA 94111**  
**(415) 693-2000**

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CALCULATION OF REGISTRATION FEE

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| Title of Securities to be Registered             | Amount to be Registered | Proposed Maximum Offering Price per Share(1) | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee |
|--|-------------------------|--|--|----------------------------|
| Stock Options and Common Stock (par value \$.01) | 2,600,000 shares        | \$4.55-\$5.125                               | \$11,970,793.25                              | \$2,992.70                 |

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h)(1) under the Securities Act of 1933, as amended (the "Act"). The offering price per share and the aggregate offering price are based upon (a) the weighted average exercise price, for shares subject to outstanding options granted under the 1998 Stock Option Plan, as amended (the "1998 Plan") and the 1999 Stock Option Plan, as amended (the "1999 Plan") and (b) the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq National Market on August 30, 2001, for shares issuable pursuant to the 1998 Plan, the 1999 Plan and the 2000 Employee Stock Purchase Plan (the "2000 Plan"). The following chart illustrates the calculation of the registration fee:

| Type of Shares   | Number of Shares | Offering Price Per Share | Aggregate Offering Price |
|--|------------------|--------------------------|--------------------------|
| Shares issuable pursuant to outstanding options under the 1998 Plan    | 103,559          | (1)(a)\$5.125            | \$530,739.88             |
| Shares issuable pursuant to unissued stock options under the 1998 Plan | 596,441          | (1)(b) \$4.55            | \$2,713,806.55           |
| Shares issuable pursuant to outstanding options under the 1999 Plan    | 644,816          | (1)(a) \$4.676           | \$3,015,159.62           |
| Shares issuable pursuant to unissued stock options under the 1999 Plan | 855,184          | (1)(b) \$4.55            | \$3,891,087.20           |
| Shares issuable pursuant to the 2000 Plan                              | 400,000          | (1)(b) \$4.55            | \$1,820,000.00           |
| Proposed Maximum Aggregate Offering Price                              |                  |                          | \$11,970,793.25          |
| Registration Fee   |                  |                          | \$2,992.70               |

**INCORPORATION BY REFERENCE OF CONTENTS OF  
REGISTRATION STATEMENT ON FORMS S-8 NOS. 333-67085, 333-36680 and 333-53332**

The contents of Registration Statements on Forms S-8 Nos. 333-67085, 333-36680 and 333-53332 filed with the Securities and Exchange Commission on November 10, 1998, May 10, 2000 and January 8, 2001, respectively, are incorporated by reference herein with such modifications as are set forth below.

**EXHIBITS**

| Exhibit Number |  |
|----------------|--|
| 5.1            | Opinion of Cooley Godward LLP                                  |
| 23.1           | Consent of Arthur Andersen LLP, Independent Public Accountants |

**Exhibit  
Number**

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- |         |   |
|---------|---|
| 23.2    | Consent of Cooley Godward LLP is contained in Exhibit 5.1 to this Registration Statement  |
| 24.1    | Power of Attorney is contained on the signature pages   |
| 99.1*   | 1998 Stock Option Plan and forms of Stock Option Agreement and Grant Notice thereunder  |
| 99.2**  | 1999 Stock Option Plan, formerly known as the 1999 Non-Officer Stock Option Plan, and form of Stock Option Agreement thereunder |
| 99.3*** | 2000 Employee Stock Purchase Plan and form of offering thereunder   |
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\*

Incorporated by reference to the contents of Registration Statement on Form S-8 No. 333-67085 filed with the Securities and Exchange Commission on November 10, 1998.

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Incorporated by reference to Exhibits 10.12 and 10.13 to the Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 27, 2001.

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Incorporated by reference to the contents of Registration Statement on Form S-8 No. 333-53332 filed with the Securities and Exchange Commission on January 8, 2001.


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**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Eden Prairie, State of Minnesota, on September 6, 2001.

DIGITAL RIVER, INC.

By /s/ JOEL A. RONNING

  
 Joel A. Ronning  
 Title: *Chief Executive Officer, Member of the Office of the President and Director*

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Joel A. Ronning and Robert E. Strawman and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|-----------|-------|------|
|-----------|-------|------|

|                                |   |                   |
|--------------------------------|---|-------------------|
| <u>/s/ JOEL A. RONNING</u>     | Chief Executive Officer, Member of the Office of the President and Director (Principal Executive Officer)                         | September 6, 2001 |
| Joel A. Ronning                |   |                   |
| <u>/s/ ROBERT E. STRAWMAN</u>  | Chief Financial Officer, Member of the Office of the President and Treasurer (Principal Financial Officer and Accounting Officer) | September 4, 2001 |
| Robert E. Strawman             |   |                   |
| <u>/s/ TIMOTHY C. CHOATE</u>   | Director  | September 4, 2001 |
| Timothy C. Choate              |   |                   |
| <u>/s/ WILLIAM LANSING</u>     | Director  | September 5, 2001 |
| William Lansing                |   |                   |
| <u>Thomas F. Madison</u>       | Director  |                   |
| Thomas F. Madison              |   |                   |
| <u>/s/ FREDERICK M. SEEGAL</u> | Director  | September 4, 2001 |
| Frederick M. Seegal            |   |                   |
| <u>/s/ PERRY W. STEINER</u>    | Director  | September 5, 2001 |
| Perry W. Steiner               |   |                   |
| <u>/s/ J. PAUL THORIN</u>      | Director  | September 5, 2001 |
| J. Paul Thorin                 |   |                   |

**EXHIBIT INDEX**

| <b>Exhibit Number</b> | <b>Description</b>  |
|-----------------------|---|
| 5.1                   | Opinion of Cooley Godward LLP   |
| 23.1                  | Consent of Arthur Andersen LLP  |
| 23.2                  | Consent of Cooley Godward LLP is contained in Exhibit 5 to this Registration Statement  |
| 24.1                  | Power of Attorney is contained on the signature pages   |
| 99.1*                 | 1998 Stock Option Plan and forms of Stock Option Agreement and Grant Notice thereunder  |
| 99.2**                | 1999 Stock Option Plan, formerly known as the 1999 Non-Officer Stock Option Plan, and form of Stock Option Agreement thereunder |
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