

DIGITAL RIVER INC /DE  
Form 10-K/A  
August 19, 2010

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
Form 10-K/A  
(Amendment No. 1)**

(Mark One)

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

**For the fiscal year ended December 31, 2009.**

**OR**

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

**Commission File Number: 000-24643  
DIGITAL RIVER, INC.**

*(Exact name of registrant as specified in its charter)*

**DELAWARE**  
*(State or other jurisdiction of  
Incorporation or organization)*

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

**9625 WEST 76TH STREET  
EDEN PRAIRIE, MINNESOTA 55344**  
*(Address of principal executive offices)*  
**(952) 253-1234**

*(Registrant's telephone number, including area code)*

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

**Name of each Exchange on which registered:**

**Common Stock \$0.01 par value**

**Nasdaq Global Select Market**

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

**None**

Indicate by checkmark if the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes  No

Indicated by checkmark 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 (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to 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

(Do not check if a smaller  
reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No   
As of June 30, 2009, there were 38,588,928 shares of Digital River, Inc. common stock, issued and outstanding. As of such date, based on the closing sales price as quoted by The Nasdaq Global Select Market, 37,783,401 shares of common stock, having an aggregate market value of approximately \$1,372,293,000 were held by non-affiliates. For purposes of the above statement only, all directors and executive officers of the registrant are assumed to be affiliates. The number of shares of common stock outstanding at February 1, 2010 was 38,653,851 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Certain sections of the Registrant's definitive Proxy Statement for the 2010 Annual Meeting of Stockholders are incorporated by reference in Part III of this Form 10-K to the extent stated herein.

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**DIGITAL RIVER, INC.**  
**FORM 10-K/A**  
**Fiscal Year Ended December 31, 2009**  
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**EXPLANATORY NOTE**

This Amendment No. 1 to the registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2009, which was originally filed with the Securities and Exchange Commission (the Commission) on February 23, 2010, is being filed solely for the purpose of revising portions of Exhibit 10.25, Exhibit 10.26, Exhibit 10.27 and Exhibit 10.28 (collectively, the Exhibits) in order to disclose certain information for which confidential treatment had been requested, in response to comments made by the Commission to the registrant's request for confidential treatment with respect to the Exhibits. The Exhibits filed with this Amendment No. 1 supersede those exhibits as previously filed as an exhibit to the registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the Securities and Exchange Commission on February 23, 2010.

In addition, as required by Rule 12b-15 of the Securities Exchange Act of 1934, new certifications by our principal executive officer and principal financial officer are included herein as exhibits to this Amendment. This Amendment No. 1 to the registrant's Annual Report on Form 10-K does not reflect events occurring after the original filing of the Form 10-K or modify or update the disclosure contained therein in any way other than as required to reflect the amendments discussed above.

**Table of Contents****PART IV****ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this report:

(1) *Financial Statements.*

The consolidated financial statements required by this item are submitted in a separate section beginning on page 56 of this report.

Report of Independent Registered Public Accounting Firm	55
Consolidated Balance Sheets	56
Consolidated Statements of Income	57
Consolidated Statements of Stockholders' Equity	58
Consolidated Statements of Cash Flows	59
Notes to Consolidated Financial Statements	60

(2) *Financial Statement Schedules.*

All schedules for which provision is made in the applicable accounting regulations of the SEC have been omitted as not required or not applicable, or the information required has been included elsewhere by reference in the financial statements and related notes, except for Schedule II, which is included with this Form 10-K, as filed with the SEC.

(3) *Exhibits*

**Exhibit****Number Description of Document**

- |         |  |
|---------|--|
| 3.1(2)  | Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.   |
| 3.2(4)  | Amended and Restated Bylaws of the Registrant, as currently in effect.   |
| 4.1(5)  | Specimen Stock Certificate.  |
| 4.2(9)  | Indenture dated as of June 1, 2004, between Digital River, Inc. and Wells Fargo Bank, N.A. as trustee, including therein the form of the Note.   |
| 10.1(5) | Form of Indemnity Agreement between Registrant and each of its directors and executive officers.   |
| 10.3(5) | Consent to Assignment and Assumption of Lease dated April 22, 1998, by and between CSM Investors, Inc., IntraNet Integration Group, Inc. and Registrant.                                   |
| 10.4(3) | Assignment of Lease dated April 21, 1998, by and between Intranet Integration Group, Inc. and Registrant.  |
| 10.5(3) | Lease Agreement dated January 18, 2000, between Property Reserve, Inc. and Registrant.   |
| 10.6(4) | First Amendment of Lease dated January 31, 2001, to that certain Lease dated April 24, 1996, between CSM Investors, Inc. and Registrant (as assignee of Intranet Integration Group, Inc.). |
| 10.7(6) | 1998 Stock Option Plan, as amended and superseded by Exhibit 10.18.*   |
| 10.8(7) | 1999 Stock Option Plan, formerly known as the 1999 Non-Officer Stock Option Plan, as amended and superseded by Exhibit 10.18.*   |
| 10.9(6) | 2000 Employee Stock Purchase Plan, as amended, and offering.*  |

- 10.11(8) Second Amendment of Lease dated April 22, 2002, to that certain Lease dated April 24, 1996, between CSM Investors, Inc. and Registrant (as assignee of Intranet Integration Group, Inc.) as amended.
- 10.12(8) Second Amendment of Lease dated April 28, 2003, to that certain Lease dated January 18, 2000, between Property Reserve Inc. and Registrant.
- 10.15(9) Registration Rights Agreement dated as of June 1, 2004, between Digital River, Inc. and the initial purchasers of Senior Convertible Notes due January 1, 2024.
- 10.16(13) Summary of Compensation Program for Non-Employee Directors.
- 10.17(14) Second Amended and Restated Symantec Online Store Agreement, by and among Symantec Corporation, Symantec Limited, Digital River, Inc. and Digital River Ireland Limited effective April 1, 2006.

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<b>Exhibit Number</b>	<b>Description of Document</b>
10.18(10)	1998 Equity Incentive Plan (formerly known as 1998 Stock Option Plan).*
10.19(13)	Amended and Restated Employment Agreement for Joel A. Ronning.*
10.20(13)	Change of Control and Severance Agreement for Thomas M. Donnelly.*
10.21(11)	Form of Amendment to Non-Qualified Stock Option Agreement.*
10.22(12)	Inducement Equity Incentive Plan.*
10.23(15)	2007 Equity Incentive Plan.*
10.24(13)	Change of Control and Severance Agreement for Kevin L. Crudden.*
10.25++	Microsoft Operations Digital Distribution Agreement, by and among Digital River, Inc. and Microsoft Corporation effective September 1, 2006.
10.26++	Direct Reseller Addendum to the Microsoft Operations Digital Distribution Agreement, by and among Digital River, Inc. and Microsoft Corporation effective September 1, 2006.
10.27++	Omnibus Amendment to the Microsoft Operations Digital Distribution Agreement, by and among Digital River, Inc. and Microsoft Corporation effective October 4, 2007.
10.28++	Amendment to the Microsoft Operations Digital Distribution Agreement, by and among Digital River, Inc. and Microsoft Corporation effective December 2, 2008.
10.29(16)	Amendment to the Microsoft Operations Digital Distribution Agreement, by and among Digital River, Inc. and Microsoft Corporation effective September 9, 2009.
12.1(16)	Computation of Ratio of Earnings to Fixed Charges.
21.1(16)	Subsidiaries of Digital River, Inc.
23.1(16)	Consent of Independent Registered Public Accounting Firm, dated February 23, 2009.
24.1(16)	Power of Attorney, pursuant to which amendments to this Annual Report on Form 10-K may be filed, is included on the signature pages of this Annual Report on Form 10-K.
31.1++	Certification of Digital River, Inc.'s Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2++	Certification of Digital River, Inc.'s Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32(16)	Certification of Digital River, Inc.'s Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.



++ Filed herewith.

\* Management contract or compensatory plan.

Confidential treatment has been requested for portions of this agreement, which portions have been filed separately with the SEC.

(1) Incorporated by reference from the Company's Current Report on Form 8-K filed on May 4, 2004.

(2) Incorporated by reference from the Company's Current Report on Form 8-K filed on June 1, 2006.

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- (3) Incorporated by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 1999, filed on March 30, 2000.
- (4) Incorporated by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed on March 27, 2001.
- (5) Incorporated by reference from the Company's Registration Statement on Form S-1 (File No. 333-56787), declared effective on August 11, 1998.
- (6) Incorporated by reference from the Company's Registration Statement on Form S-8 (File No. 333-105864) filed on June 5, 2003.
- (7) Incorporated by reference from the Company's Quarterly

Report on Form  
10-Q for the  
quarter ended  
June 30, 2003,  
filed on  
August 14,  
2003.

- (8) Incorporated by reference from the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003, filed on May 15, 2003.
- (9) Incorporated by reference from the Company's Current Report on Form 8-K filed on July 13, 2004.
- (10) Incorporated by reference from the Company's Current Report on Form 8-K filed on May 31, 2005.
- (11) Incorporated by reference from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005, filed on August 9, 2005.
- (12) Incorporated by reference from the Company's Current Report on Form 8-K

filed on  
December 20,  
2005.

(13) Incorporated by  
reference from  
the Company's  
Current Report  
on Form 8-K  
filed on  
March 10, 2008.

(14) Incorporated by  
reference from  
the Company's  
Annual Report  
on Form 10-K  
for the year  
ended  
December 31,  
2006, filed on  
March 1, 2007.

(15) Incorporated by  
reference from  
the Company's  
Annual Report  
on Form 10-K  
for the year  
ended  
December 31,  
2007, filed on  
February 29,  
2008.

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2009, filed on  
February 23,  
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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 Amendment No. 1 to report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Eden Prairie, State of Minnesota, on August 19, 2010.

DIGITAL RIVER, INC.

By: /s/ Joel A. Ronning  
Joel A. Ronning  
Chief Executive Officer

Date: August 19, 2010

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**Exhibit Index**

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