

WELLS REAL ESTATE INVESTMENT TRUST II INC

Form POS AM

November 22, 2004

Table of Contents

As filed with the Securities and Exchange Commission on November 22, 2004

Registration No. 333-107066

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 6

TO

FORM S-11

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

Wells Real Estate Investment Trust II, Inc.

(Exact name of registrant as specified in its charter)

6200 The Corners Parkway, Suite 250

Norcross, Georgia 30092

(770) 449-7800

(Address, including zip code, and telephone number, including area code, of the registrant's principal executive offices)

Leo F. Wells, III

President

Wells Real Estate Investment Trust II, Inc.

6200 The Corners Parkway, Suite 250

Norcross, Georgia 30092

(770) 449-7800

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

Copies to:

Brad S. Markoff, Esq.

M. Hill Jeffries, Esq.

Robert H. Bergdolt, Esq.

Alston & Bird LLP

One Atlantic Center

1201 West Peachtree Street

Atlanta, Georgia 30309-3424

(404) 881-7000

Approximate date of commencement of proposed sale to public: As soon as practicable after the effectiveness of the registration statement.

Table of Contents

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

This Post-Effective Amendment No. 6 consists of the following:

1. The Registrant's final form of Prospectus dated November 26, 2003, previously filed pursuant to Rule 424(b)(4) on December 1, 2003 and refiled herewith.
 2. Supplement No. 9 dated May 18, 2004 to the Registrant's Prospectus dated November 26, 2003, previously filed as part of Post Effective Amendment No. 4, which is refiled herewith.
 3. Supplement No. 17 dated August 17, 2004 to the Registrant's Prospectus dated November 26, 2003, previously filed as part of Post Effective Amendment No. 5, which is refiled herewith.
 4. Supplement No. 22 dated November 22, 2004 to the Registrant's Prospectus dated November 26, 2003.
 5. Part II included herewith.
-

Table of Contents

WELLS REAL ESTATE INVESTMENT TRUST II, INC.

Maximum Offering of 785,000,000 Shares of Common Stock

Minimum Offering of 250,000 Shares of Common Stock

Wells Real Estate Investment Trust II, Inc. is a newly organized Maryland corporation that intends to qualify as a REIT beginning with the taxable year that will end December 31, 2003. We expect to use substantially all of the net proceeds from this offering to acquire and operate commercial real estate primarily consisting of high quality, income-generating office and industrial properties leased to creditworthy companies and governmental entities. Because we have not yet identified any specific properties to purchase, we are considered to be a blind pool.

We are offering up to 600,000,000 shares of common stock in our primary offering for \$10 per share, with discounts available for certain categories of purchasers as described in Plan of Distribution. We are also offering up to 185,000,000 shares to be issued pursuant to our dividend reinvestment plan at a purchase price equal to the higher of \$9.55 per share or 95% of the estimated value of a share of our common stock, as estimated by our advisor or another firm we choose for that purpose.

See Risk Factors beginning on page 21 to read about risks you should consider before buying shares of our common stock. These risks include the following:

No public market currently exists for our shares of common stock. If you are able to sell your shares, you would likely have to sell them at a substantial discount.

We are dependent on our advisor to select investments and conduct our operations. Adverse changes in the financial health of our advisor or our relationship with our advisor could adversely affect us.

We have no operating history nor do we currently own any properties. We have not identified any properties to acquire with proceeds from this offering.

Our advisor and its affiliates will face conflicts of interest, including significant conflicts created by our advisor's compensation arrangements with us and similar programs sponsored by our advisor.

If we raise substantially less than the maximum offering, we may not be able to invest in a diverse portfolio of properties and the value of your investment may vary more widely with the performance of specific properties.

We will pay substantial fees and expenses to our advisor, its affiliates and participating broker-dealers, which payments increase the risk that you will not earn a profit on your investment.

Neither the SEC, the Attorney General of the State of New York nor any other state securities regulator has approved or disapproved of our common stock, determined if this prospectus is truthful or complete or passed on or endorsed the merits of this offering. Any representation to the contrary is a criminal offense.

The use of projections or forecasts in this offering is prohibited. No one is permitted to make any oral or written predictions about the cash benefits or tax consequences you will receive from your investment.

	Price to Public*	Selling Commissions*	Dealer Manager Fee*	Net Proceeds (Before Expenses)
Primary Offering				
Per Share	\$ 10.00	\$ 0.70	\$ 0.25	\$ 9.05
Total Minimum	\$ 2,500,000	\$ 175,000	\$ 62,500	\$ 2,262,500
Total Maximum	\$ 6,000,000,000	\$ 420,000,000	\$ 150,000,000	\$ 5,430,000,000
Dividend Reinvestment Plan				
Per Share	\$ 9.55	\$ 0.4775	\$	\$ 9.0725
Total Maximum	\$ 1,766,750,000	\$ 88,337,500	\$	\$ 1,678,412,500

* The selling commissions and, in some cases, all or a portion of the dealer manager fee will not be charged with regard to shares sold to or for the account of certain categories of purchasers. The reduction in these fees will be accompanied by a corresponding reduction in the per share purchase price, except that all shares sold under the dividend reinvestment plan will be at the higher of \$9.55 per share or 95% of the estimated value of a share of our common stock. See Plan of Distribution.

The dealer manager of this offering, Wells Investment Securities, Inc., is our affiliate and will offer the shares on a best-efforts basis. The minimum permitted purchase is generally \$1,000. We will not sell any shares unless we sell a minimum of 250,000 shares to the public for \$10 per share by November 26, 2004 (one year from the date of this prospectus). Pending satisfaction of this condition, all subscription payments will be placed in an account held by the escrow agent, SouthTrust Bank, in trust for subscribers benefit, pending release to us. If we do not sell at least 250,000 shares for \$10 per share by November 26, 2004, we will return all funds in the escrow account (including interest), and we will stop selling shares.

WELLS INVESTMENT SECURITIES, INC.

November 26, 2003

Table of Contents

SUITABILITY STANDARDS

The shares we are offering are suitable only as a long-term investment. Because there is no public market for the shares, you will have difficulty selling your shares. In consideration of these factors, we require initial stockholders and subsequent purchasers to have either:

a net worth of at least \$150,000; or

gross annual income of at least \$45,000 and a net worth of at least \$45,000.

In addition, we will not sell shares to investors in the states named below unless they meet special suitability standards.

California, Iowa, Massachusetts, Michigan, Missouri, New Jersey and Tennessee - Investors must have either (1) a net worth of at least \$225,000, or (2) gross annual income of at least \$60,000 and a net worth of at least \$60,000.

Maine - Investors must have either (1) a net worth of at least \$200,000, or (2) gross annual income of at least \$50,000 and a net worth of at least \$50,000.

Iowa, Missouri, Ohio and Pennsylvania - In addition to the suitability requirements described above, investors must have a net worth of at least 10 times their investment in us.

For purposes of determining suitability of an investor, net worth in all cases should be calculated excluding the value of an investor's home, furnishings and automobiles. In the case of sales to fiduciary accounts, these suitability standards must be met by the fiduciary account, by the person who directly or indirectly supplied the funds for the purchase of the shares if such person is the fiduciary or by the beneficiary of the account.

Those selling shares on our behalf must make every reasonable effort to determine that the purchase of shares in this offering is a suitable and appropriate investment for each stockholder based on information provided by the stockholder regarding the stockholder's financial situation and investment objectives. See **Plan of Distribution Suitability Standards** for a detailed discussion of the determinations regarding suitability that we require of all those selling shares on our behalf.

Table of Contents

TABLE OF CONTENTS

<u>Suitability Standards</u>	i
<u>Questions and Answers About this Offering</u>	1
<u>Prospectus Summary</u>	12
<u>Wells Real Estate Investment Trust II, Inc</u>	12
<u>Our Advisor</u>	12
<u>Our Management</u>	12
<u>Our REIT Status</u>	12
<u>Summary Risk Factors</u>	13
<u>Description of Real Estate Investments</u>	13
<u>Estimated Use of Proceeds of Offering</u>	13
<u>Investment Objectives</u>	14
<u>Conflicts of Interest</u>	14
<u>Prior Offering Summary</u>	15
<u>The Offering</u>	15
<u>Compensation to Wells Capital and its Affiliates</u>	16
<u>Dividend Policy</u>	18
<u>Listing</u>	18
<u>Dividend Reinvestment Plan</u>	19
<u>Proposed Share Redemption Program</u>	19
<u>Wells Operating Partnership II, L.P.</u>	19
<u>ERISA Considerations</u>	20
<u>Description of Shares</u>	20
<u>Risk Factors</u>	21
<u>Risks Related to an Investment In Us</u>	21
<u>There is no public trading market for your shares; therefore, it will be difficult for you to sell your shares</u>	21
<u>If we are unable to find suitable investments, we may not be able to achieve our investment objectives or pay dividends</u>	21
<u>We may suffer from delays in locating suitable investments, which could adversely affect our ability to make distributions and the value of your investment</u>	22
<u>Because this is a blind pool offering, you will not have the opportunity to evaluate our investments before we make them, which makes your investment more speculative</u>	22
<u>If we are unable to raise substantial funds, we will be limited in the number and type of investments we may make, and the value of your investment in us will fluctuate with the performance of the specific properties we acquire</u>	22
<u>Our lack of prior operating history or established financing sources hinders your ability to evaluate this investment</u>	23
<u>Our loss of or inability to obtain key personnel could delay or hinder implementation of our investment strategies, which could adversely affect our ability to make distributions and the value of your investment</u>	23
<u>Our rights and the rights of our stockholders to recover claims against our independent directors are limited, which could reduce your and our recovery against them if they negligently cause us to incur losses</u>	23
<u>Risks Related to Conflicts of Interest</u>	24

Table of Contents

Wells Capital and possibly Wells Management will face conflicts of interest relating to the purchase and leasing of properties, and such conflicts may not be resolved in our favor, which could adversely affect our investment opportunities and hence our ability to pay dividends 24

Wells Capital will face conflicts of interest relating to joint ventures that we may form with affiliates of Wells Capital, which conflicts could result in a disproportionate benefit to the other venture partners at our expense 24

Wells Capital, its affiliates and our officers will face competing demands relating to their time, and this may cause our operations to suffer 25

Our officers and some of our directors face conflicts of interest related to the positions they hold with Wells Capital and its affiliates, which could hinder our ability to successfully implement our business strategy and to generate returns to you 25

Wells Capital and its affiliates, including our officers and some of our directors, will face conflicts of interest caused by compensation arrangements with us and other Wells-sponsored programs, which could result in actions that are not in the long-term best interests of our stockholders 25

Our board's loyalties to Wells REIT I (and possibly to future Wells-sponsored programs) could influence its judgment 26

Our operating performance could suffer if Wells Capital incurs significant losses, including those losses that may result from being the general partner of other entities 27

There is no separate counsel for our affiliates and us, which could result in conflicts of interest and our pursuit of actions not in our stockholders' best interests 27

Risks Related to This Offering and Our Corporate Structure 28

Our charter limits the number of shares a person may own, which may discourage a takeover that could otherwise result in a premium price to our stockholders 28

Our charter permits our board of directors to issue stock with terms that may subordinate the rights of our common stockholders or discourage a third party from acquiring us in a manner that could result in a premium price to our stockholders 28

Your investment return may be reduced if we are required to register as an investment company under the Investment Company Act; if we become an unregistered investment company, we could not continue our business 28

You will have limited control over changes in our policies and operations 29

You may not be able to sell your shares under the proposed share redemption program 29

The offering price was not established on an independent basis; the actual value of your investment may be substantially less than what you pay 30

Because the dealer manager is one of our affiliates, you will not have the benefit of an independent review of us or the prospectus customarily undertaken in underwritten offerings 30

Your interest in us will be diluted if we issue additional shares 30

Payment of fees to Wells Capital and its affiliates will reduce cash available for investment and distribution 30

We may be unable to pay or maintain cash distributions or increase distributions over time 31

Adverse economic and geopolitical conditions could negatively affect our returns and profitability 31

If we are unable to obtain funding for future capital needs, cash distributions to our stockholders and the value of our investments could decline 31

Table of Contents

<u>You may be more likely to sustain a loss on your investment because our promoters do not have as strong an economic incentive to avoid losses as do promoters who have made significant equity investments in their company</u>	32
<u>General Risks Related To Investments In Real Estate</u>	32
<u>Economic and regulatory changes that impact the real estate market may adversely affect our operating results and the value of our real estate properties</u>	32
<u>Properties that have significant vacancies could be difficult to sell, which could diminish the return on your investment</u>	32
<u>We depend on tenants for our revenue, and lease terminations could reduce our distributions to our stockholders</u>	33
<u>Our inability to sell a property when we want could adversely impact our ability to pay cash distributions to you</u>	33
<u>Uninsured losses relating to real property or excessively expensive premiums for insurance coverage may adversely affect your returns</u>	33
<u>Our operating results may be negatively affected by potential development and construction delays and resultant increased costs and risks</u>	33
<u>Competition with third parties in acquiring properties and other investments may reduce our profitability and the return on your investment</u>	34
<u>Uncertain market conditions relating to the future disposition of properties could adversely affect the return on your investment</u>	34
<u>Actions of our joint venture partners could negatively impact our performance</u>	34
<u>Costs of complying with governmental laws and regulations may adversely affect our income and the cash available for any distributions</u>	35
<u>Discovery of previously undetected environmentally hazardous conditions may adversely affect our cash flows</u>	35
<u>If we sell properties and provide financing to purchasers, defaults by the purchasers would adversely affect our cash flows</u>	36
<u>Risks Associated with Debt Financing</u>	36
<u>We may incur mortgage indebtedness and other borrowings, which may increase our business risks</u>	36
<u>High mortgage rates may make it difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire and the amount of cash distributions we can make</u>	36
<u>Lenders may require us to enter into restrictive covenants relating to our operations, which could limit our ability to make distributions to our stockholders</u>	37
<u>Increases in interest rates could increase the amount of our debt payments and adversely affect our ability to pay dividends to our stockholders</u>	37
<u>We have broad authority to incur debt, and high debt levels could hinder our ability to make distributions and could decrease the value of your investment</u>	37
<u>Section 1031 Exchange Program Risks</u>	37
<u>We may have increased exposure to liabilities from litigation as a result of our participation in the Section 1031 Exchange Program</u>	37
<u>We will be subject to risks associated with co-tenancy arrangements that are not otherwise present in a real estate investment</u>	38
<u>Our participation in the Section 1031 Exchange Program may limit our ability to borrow funds in the future</u>	38
<u>Federal Income Tax Risks</u>	39
<u>Failure to qualify as a REIT would adversely affect our operations and our ability to make distributions</u>	39

Table of Contents

<u>Certain fees paid to Wells OP II may cause us to lose our REIT status</u>	39
<u>Recharacterization of transactions under the Section 1031 Exchange Program may result in a 100% tax on income from a prohibited transaction, which would diminish our cash distributions to our stockholders</u>	39
<u>Recharacterization of sale-leaseback transactions may cause us to lose our REIT status</u>	40
<u>You may have current tax liability on distributions you elect to reinvest in our common stock</u>	40
<u>In certain circumstances, we may be subject to federal and state income taxes as a REIT, which would reduce our cash available for distribution to you</u>	40
<u>Legislative or regulatory action tax changes could adversely affect you</u>	40
<u>Retirement Plan Risks</u>	41
<u>If you fail to meet the fiduciary and other standards under ERISA or the Internal Revenue Code as a result of an investment in our stock, you could be subject to criminal and civil penalties</u>	41
<u>Cautionary Note Regarding Forward-Looking Statements</u>	42
<u>Estimated Use of Proceeds</u>	42
<u>Management</u>	44
<u>Board of Directors</u>	44
<u>Committees of the Board of Directors</u>	45
<u>Executive Officers and Directors</u>	46
<u>Compensation of Directors</u>	51
<u>Independent Director Stock Option Plan</u>	52
<u>Stock Option Plan</u>	53
<u>Limited Liability and Indemnification of Directors, Officers, Employees and Other Agents</u>	54
<u>The Advisor</u>	55
<u>The Advisory Agreement</u>	56
<u>Initial Investment by Our Advisor</u>	57
<u>Affiliated Companies</u>	58
<u>Management Decisions</u>	61
<u>Management Compensation</u>	62
<u>Stock Ownership</u>	67
<u>Conflicts of Interest</u>	67
<u>Our Advisor's Interests in Other Wells Real Estate Programs</u>	67
<u>Receipt of Fees and Other Compensation by Wells Capital and its Affiliates</u>	69
<u>Our Board's Loyalties to Wells REIT I and Possibly to Future Wells-sponsored Programs</u>	70
<u>Fiduciary Duties Owed by Some of Our Affiliates to Our Advisor and Our Advisor's Affiliates</u>	71
<u>Affiliated Dealer Manager</u>	71
<u>Affiliated Property Manager</u>	71
<u>Lack of Separate Representation</u>	71
<u>Certain Conflict Resolution Procedures</u>	72
<u>Investment Objectives and Criteria</u>	76
<u>General</u>	76
<u>Acquisition and Investment Policies</u>	77
<u>Section 1031 Exchange Program</u>	81
<u>Borrowing Policies</u>	82
<u>Disposition Policies</u>	83
<u>Investment Limitations</u>	83

Table of Contents

<u>Plan of Operation</u>	85
<u>General</u>	85
<u>Liquidity and Capital Resources</u>	86
<u>Results of Operations</u>	87
<u>Inflation</u>	87
<u>Critical Accounting Policies</u>	87
<u>Distributions</u>	89
<u>Prior Performance Summary</u>	89
<u>Publicly Offered Unspecified Real Estate Programs</u>	91
<u>Federal Income Tax Considerations</u>	102
<u>Federal Income Taxation of the Company</u>	102
<u>Requirements for Qualification</u>	104
<u>Annual Distribution Requirements</u>	109
<u>Earnings and Profits</u>	110
<u>Failure to Qualify</u>	111
<u>Sale-Leaseback Transactions</u>	111
<u>Taxation of U.S. Stockholders</u>	111
<u>Special Tax Considerations for Non-U.S. Stockholders</u>	114
<u>Information Reporting Requirements and Backup Withholding Tax</u>	116
<u>Tax Aspects of Wells OP II</u>	117
<u>State and Local Tax</u>	119
<u>ERISA Considerations</u>	119
<u>Prohibited Transactions</u>	120
<u>Plan Asset Considerations</u>	120
<u>Other Prohibited Transactions</u>	122
<u>Annual Valuation</u>	122
<u>Description of Shares</u>	123
<u>Common Stock</u>	124
<u>Preferred Stock</u>	124
<u>Meetings and Special Voting Requirements</u>	124
<u>Restriction on Ownership of Shares</u>	125
<u>Dividends</u>	126
<u>Dividend Reinvestment Plan</u>	127
<u>Proposed Share Redemption Program</u>	129
<u>Registrar and Transfer Agent</u>	130
<u>Restrictions on Roll-Up Transactions</u>	131
<u>The Operating Partnership Agreement</u>	132
<u>General</u>	132
<u>Capital Contributions</u>	132
<u>Operations</u>	133
<u>Distributions and Allocations of Profits and Losses</u>	133
<u>Rights, Obligations and Powers of the General Partner</u>	133
<u>Exchange Rights</u>	134
<u>Change in General Partner</u>	135
<u>Transferability of Interests</u>	135
<u>Amendment of Limited Partnership Agreement</u>	135
<u>Plan of Distribution</u>	136
<u>General</u>	136
<u>Compensation of Dealer Manager and Participating Broker-Dealers</u>	136
<u>Subscription Procedures</u>	140
<u>Suitability Standards</u>	141

Table of Contents

<u>Minimum Purchase Requirements</u>	142
<u>Special Notice to Pennsylvania Investors</u>	142
<u>Supplemental Sales Material</u>	143
<u>Legal Matters</u>	143
<u>Experts</u>	143
<u>Where You Can Find More Information</u>	143
<u>Index to Consolidated Balance Sheet and Prior Performance Tables</u>	F-1
<u>Report of Independent Auditors</u>	F-2
<u>Appendix A Subscription Agreement (Sample) with Instructions</u>	A-1
<u>Appendix B Dividend Reinvestment Plan</u>	B-1

Table of Contents

QUESTIONS AND ANSWERS ABOUT THIS OFFERING

Below we have provided some of the more frequently asked questions and answers relating to an offering of this type. Please see the Prospectus Summary and the remainder of this prospectus for more detailed information about this offering.

Q: What is a REIT?

A: In general, a REIT is a company that:

combines the capital of many investors to acquire or provide financing for real estate properties;

allows individual investors to invest in a large-scale diversified real estate portfolio through the purchase of interests, typically shares, in the REIT;

is required to pay dividends to investors of at least 90% of its taxable income; and

avoids the double taxation treatment of income that would normally result from investments in a corporation because a REIT does not generally pay federal corporate income taxes on its net income, provided certain income tax requirements are satisfied.

Q: What is Wells Real Estate Investment Trust II, Inc.?

A: Wells Real Estate Investment Trust II, Inc. is a newly organized Maryland corporation that intends to qualify as a REIT beginning with the taxable year that will end December 31, 2003. We expect to use substantially all of the net proceeds from this offering to acquire and operate commercial real estate primarily consisting of high quality, income-generating office and industrial properties leased to creditworthy companies and governmental entities. We may also invest in entities that make similar investments. We were incorporated in the State of Maryland in July 2003.

Q: What is your relationship to Wells Real Estate Investment Trust, Inc.?

A: Wells Real Estate Investment Trust, Inc., which we refer to as Wells REIT I, is a separate REIT from us. However, we have a common advisor, Wells Capital, Inc., and some of our directors and all of our officers are also directors and officers of Wells REIT I.

Q: Are there any risks involved in an investment in your shares?

Edgar Filing: WELLS REAL ESTATE INVESTMENT TRUST II INC - Form POS AM

- A: An investment in our shares involves significant risk. You should read the Risk Factors section of this prospectus beginning on page 21. That section contains a detailed discussion of material risks that you should consider before you invest in the common stock we are selling with this

Table of Contents

prospectus. Some of the more significant risks relating to an investment in our shares include the following:

No public market currently exists for our shares of common stock. If you are able to sell your shares, you would likely have to sell them at a substantial discount from their public offering price.

We have no operating history, nor do we currently own any properties. We have not identified any properties to acquire with proceeds from this offering.

If we raise substantially less than the maximum offering, we may not be able to invest in a diverse portfolio of properties, and the value of your investment may vary more widely with the performance of specific properties.

We are dependent on our advisor to select investments and conduct our operations; thus, adverse changes in the financial health of our advisor or our relationship with our advisor could adversely affect us.

We will pay substantial fees and expenses to our advisor, its affiliates and participating broker-dealers, which payments increase the risk that you will not earn a profit on your investment.

Our advisor and its affiliates will face conflicts of interest, including significant conflicts created by our advisor's compensation arrangements with us and other Wells-sponsored programs.

Q: Who is your advisor?

A: Wells Capital is our advisor. Wells Capital was incorporated in the State of Georgia in 1984. As of September 30, 2003, Wells Capital had sponsored or advised public real estate programs that had raised approximately \$4.3 billion from approximately 119,000 investors and that owned and operated more than 22 million square feet of commercial real estate properties.

Q: What will the advisor do?

A: Wells Capital, as our advisor, will manage our daily affairs and make recommendations on all property acquisitions to our board of directors. We expect that a committee of our board of directors comprised of all of our independent directors will exercise its right to approve or reject all proposed property acquisitions. Wells Capital will also provide asset management, marketing, investor relations and other administrative services on our behalf.

Q: How will Wells Capital select potential properties for acquisition?

A: Wells Capital will generally seek to acquire high quality office and industrial building