

BARNES & NOBLE INC

Form S-8

July 13, 2009

As filed with the Securities and Exchange Commission on July 13, 2009

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

BARNES & NOBLE, INC.

(Exact name of issuer as specified in its charter)

Delaware

06-1196501

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

122 Fifth Avenue

New York, NY

10011

(Address of Principal Executive Offices)

(Zip Code)

Barnes & Noble, Inc. 2009 Incentive Plan
(Full title of the plan)

Leonard Riggio

Chairman of the Board

Barnes & Noble, Inc.

122 Fifth Avenue

New York, NY 10011

(212) 633-3300

(Name, address and telephone number of agent for service)

Copies to:

Jay M. Dorman, Esq.

Bryan Cave LLP

1290 Avenue of the Americas

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New York, NY 10104

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.

Large accelerated filer X

Accelerated filer o

Non-accelerated filer (Do not check if a smaller reporting company) o

Smaller reporting company o

CALCULATION OF REGISTRATION FEE

Title of Securities	Amount	Proposed Maximum Offering Price	Proposed Maximum Aggregate Offering	Amount of
	to be			Registration Fee
to be Registered	Registered	Per Share(2)	Price (2)	
Common Stock, \$.001 par value per share	950,000(1)	\$19.70	\$18,715,000	\$1,044.30

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- (1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the Registrant's 2009 Incentive Plan (the Plan) by reason of any stock dividend, stock split or similar transaction. In addition, 2,011,953 shares previously registered under the Registrant's Registration Statement on Form S-8 for the Barnes & Noble, Inc. 2004 Incentive Plan, Commission file number 333-116382, may also be issued under the Plan.
- (2) Estimated solely for purposes of calculating the registration fee. Pursuant to Rules 457(c) and (h), the Proposed Maximum Offering Price Per Share and the Proposed Maximum Aggregate Offering Price are computed on the basis of the average of the high and low prices for such security on July 8, 2009, as reported on the New York Stock Exchange.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Items 1 and 2. Plan Information; Registrant Information and Employee Plan Annual Information.

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the Securities Act), and the Note to Part I of Form S-8. The documents containing information specified in Part I will be delivered to participants in the Plan covered by this Registration Statement as required by Rule 428.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Barnes & Noble, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") are incorporated as of their respective dates in this Registration Statement by reference:

1. Annual Report on Form 10-K for the fiscal year ended January 31, 2009, filed on April 1, 2009.
2. Quarterly Report on Form 10-Q for the fiscal quarter ended May 2, 2009, filed on June 11, 2009.
3. Current Reports on Form 8-K filed on February 17, 2009, February 26, 2009, March 23, 2009 and June 5, 2009.
4. Description of the Company's common stock contained in Item I of the Company's Registration Statement on Form 8-A, filed with the Commission on September 2, 1993.

All documents filed subsequent to the filing date of this Registration Statement with the Commission by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered by this Registration Statement have been sold or which de-registers all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be

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deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequent filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement, except as indicated herein.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (DGCL) and Article X of the Company's amended and restated by-laws (By-laws) provide for the indemnification of the Company's directors and officers in a variety of circumstances, which may include liabilities under the Securities Act.

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Section 145 of the DGCL also provides that the indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145 of the DGCL also provides that a corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Section 145.

Article X of our By-laws generally requires us to indemnify our directors and officers against all liabilities (including judgments, settlements, fines and penalties) and reasonable expenses incurred in connection with the investigation, defense, settlement or appeal of any type of action, whether instituted by a third party or a stockholder (either directly or derivatively), and allows the Company to maintain insurance, at our expense, to protect the Company and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise, against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the DGCL.

In addition, our amended and restated certificate of incorporation, as amended (Certificate of Incorporation), contains a provision which eliminates the personal liability of a director to us and our stockholders for certain breaches of his or her fiduciary duty of care as a director. This provision does not, however, eliminate or limit the personal liability of a director (i) for any breach of such director's duty of loyalty to us or our stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under the Delaware statutory provision making directors personally liable, under a negligence standard, for unlawful dividends or unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. This provision offers persons who serve on our Board of Directors protection against awards of monetary damages resulting from breaches of their duty of care (except as indicated above), including grossly negligent business decisions made in connection with takeover proposals. As a result of this provision, our ability or the ability of our stockholders to successfully prosecute an action against a director for a breach of his duty of care has been limited. However, the provision does not affect the availability of equitable remedies such as an injunction or rescission based upon a director's breach of his duty of care. The Commission has taken the position that the provision will have no effect on claims arising under the federal securities laws.

The above discussion of the DGCL, the Certificate of Incorporation and the By-laws is not intended to be exhaustive and is qualified in its entirety by such statutes, Certificate of Incorporation and By-laws, as applicable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

5.1 Opinion of Bryan Cave LLP, counsel to the Company, as to the legality of the Common Stock being registered.

10.1 Barnes & Noble, Inc. 2009 Incentive Plan.*

23.1 Consent of BDO Seidman, LLP.

23.2 Letter from BDO Seidman, LLP to the Securities and Exchange Commission.

23.3 Consent of Bryan Cave LLP (included as part of Exhibit 5.1).

24.1 Power of Attorney (included on signature page).

* Incorporated by reference to Appendix A to the Barnes & Noble, Inc. Definitive Proxy Statement filed with the Securities and Exchange Commission on April 16, 2009.

Item 9. Undertakings.

1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (1)(a)(i) and (1)(a)(ii) will not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned registrant hereby further undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions described under Item 6 above, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 New York, State of New York, on the 9th day of July, 2009.

BARNES & NOBLE, INC.

By: /s/ Joseph J. Lombardi
Joseph J. Lombardi

Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint Leonard Riggio, Stephen Riggio and Joseph J. Lombardi, and each or any of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including, without limitation, post-effective amendments and documents in connection therewith) to this Registration Statement, and to file the same with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>CAPACITY</u>	<u>DATE</u>
/s/ Leonard Riggio Leonard Riggio	Chairman of the Board	July 9, 2009
/s/ Stephen Riggio Stephen Riggio	Vice Chairman and Chief Executive Officer (principal executive officer)	July 9, 2009
/s/ Joseph J. Lombardi Joseph J. Lombardi	Chief Financial Officer (principal financial officer)	July 9, 2009
/s/ Allen W. Lindstrom Allen W. Lindstrom	Vice President, Corporate Controller (principal accounting officer)	July 9, 2009
/s/ George Campbell, Jr. George Campbell, Jr.	Director	July 9, 2009

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/s/ Michael J. Del Giudice
Michael J. Del Giudice

Director

July 9, 2009

/s/ William Dillard, II
William Dillard, II

Director

July 9, 2009

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<u>SIGNATURE</u>	<u>CAPACITY</u>	<u>DATE</u>
/s/ Patricia L. Higgins Patricia L. Higgins	Director	July 9, 2009
/s/ Irene R. Miller Irene R. Miller	Director	July 9, 2009
/s/ Margaret T. Monaco Margaret T. Monaco	Director	July 9, 2009
/s/ Lawrence S. Zilavy Lawrence S. Zilavy	Director	July 9, 2009

EXHIBIT INDEX

Exhibit

<u>Number</u>	<u>Description</u>
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* Filed herewith.