

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9928 / September 24, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75974 / September 24, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4209 / September 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16831

In the Matter of

**G ASSET MANAGEMENT,
LLC AND MICHAEL A.
GLICKSTEIN,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
AND SECTIONS 203(e) AND 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against G Asset Management, LLC (“GAM”) and Michael A. Glickstein (“Glickstein,” and collectively with GAM, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

A. SUMMARY

1. This proceeding arises out of a press release issued by Respondents on February 21, 2014, announcing that GAM had offered to purchase a majority interest in Barnes & Noble, Inc. ("Barnes & Noble" or the "Company") for \$22 per share. Respondents' press release was misleading because it did not disclose material facts, including that GAM had (i) no ability to finance its purported purchase offer and no reasonable basis to believe it could finance its offer in the future; and (ii) recently purchased short-term call options,¹ intending to reap a short-term profit should the market react positively to the press release by selling the options or the shares after the options had been exercised.

2. In the days and hours leading up to the February 21, 2014 press release, Respondents caused investment funds that they manage to purchase thousands of Barnes & Noble shares and call options due to expire on February 22, 2014 and March 22, 2014. After Respondents' press release was issued at 1:20 p.m.² on February 21, 2014, Barnes & Noble's stock price increased from \$17.05 per share to \$18.99 per share in a matter of seconds, causing the NYSE to implement a five-minute trading halt pursuant to its Rule 80C. After trading re-opened in Barnes & Noble stock, the stock price fell to \$18.06 but remained above \$17.63 throughout the rest of the day and closed at \$17.69.

3. Once trading resumed, Respondents caused their investment funds to sell at least 3,000 Barnes & Noble shares and 3,700 Barnes & Noble call options for a profit before the market closed. After market close on February 21, Respondents' investment funds exercised thousands of in-the-money call options, resulting in the purchase of 184,000 Barnes & Noble shares. Respondents then sold 142,600 of those shares for a profit on Monday, February 24, 2014.

¹ A call option is a financial contract between two parties that gives the buyer the right, but not the obligation, to buy an agreed quantity of stock during a specified time period for a specified price, known as the strike price. A buyer pays a fee, or premium, to purchase this right and generally stands to gain if the price of the stock increases.

² All times referenced herein are set forth in Eastern Standard Time.

4. As a result of Respondents' trades before and after the February 21 press release, Respondents' investment funds reaped profits of approximately \$168,000.

B. RESPONDENTS

5. **GAM** is a Delaware limited liability corporation with its principal place of business in New York, New York. GAM is an unregistered investment adviser that had less than \$3 million in total assets under management in February 2014. GAM served as investment adviser to G Real Estate Partners, L.P., G Value Partners, L.P., and G Value Fund, LLC.

6. **Glickstein**, age 34 and a resident of New York, New York, is the sole owner of GAM and has served as GAM's president and chief investment officer since its formation in January 2011.

C. OTHER RELEVANT ENTITIES

7. **Barnes & Noble**, a Delaware corporation headquartered in New York, New York, is a retail bookseller in the United States. Barnes & Noble's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE. Barnes & Noble files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

8. **G Real Estate Partners, L.P.** ("GREP"), a Delaware limited partnership, is an investment fund operated by Respondents that made investments in real estate and securities, including Barnes & Noble stock and options. GREP has approximately 15 investors.

9. **G Value Partners, L.P.** ("GVP"), a Delaware limited partnership, is an investment fund operated by Respondents that made investments in securities, including Barnes & Noble stock and options. GVP has less than ten investors.

10. **G Value Fund, LLC** ("GVF"), a Delaware limited liability corporation, is an investment fund operated by Respondents that made investments in securities, including Barnes & Noble stock and options. GVF has less than ten investors.

D. BACKGROUND

11. Beginning in early 2011, GAM and Glickstein caused GREP, GVF, and GVP to make investments in Barnes & Noble shares and options. Beginning no later than April 6, 2011, Respondents' representatives contacted Barnes & Noble to propose various transactions, including GAM's potential acquisition of a 51% share of Barnes & Noble. Between April 6, 2011 and November 15, 2013, Respondents also filed Schedule 13Ds reflecting their holdings in Barnes & Noble securities and referencing a proposal to Barnes & Noble. Each time, Barnes & Noble rebuffed Respondents' overtures and Respondents failed to secure any source to fund the proposed transactions.

E. RESPONDENTS' FEBRUARY 21, 2014 PRESS RELEASE

12. At 9:31 p.m. on Thursday, February 20, 2014, Respondents sent an email to Barnes & Noble, proposing to acquire 51% of the Company at \$22 per share or, in the alternative, to acquire 51% of the Company's electronic reader business unit ("NOOK business") at \$5 per share.

13. As of February 20, 2014, GAM had no ability to finance either of its purported purchase offers and no reasonable basis to believe it could finance the offers in the future even if Barnes & Noble accepted one of these offers. Specifically, as the manager of funds (GREP, GVP, and GVF) with less than \$3 million in total assets under management, GAM had no ability to acquire 51% of Barnes & Noble at \$22 per share because that would require Respondents to raise approximately \$670 million to finance the purchase. Similarly, GAM had no ability to acquire 51% of the NOOK business at \$5 per share because that would require Respondents to raise approximately \$152 million. While Glickstein claims that he believed GAM could have obtained adequate funding to finance these offers, there is no evidence suggesting that this was a reasonable belief because, in part, GAM had made no progress whatsoever in its efforts to secure the necessary financing.

14. Respondents accumulated a position that was poised to increase if the market believed that GAM had a legitimate prospect of completing its proposed transaction with Barnes & Noble. Indeed, in advance of the press release, Respondents had caused the GREP, GVP, and GVF accounts to hold approximately 14,000 shares of Barnes & Noble common stock and approximately 30,050 Barnes & Noble call options with strike prices between \$15 and \$22 that were due to expire on February 22, 2014, and March 22, 2014. And in the days and hours leading up to the February 21, 2014 press release, Respondents made the following net purchases of Barnes & Noble securities in the GREP, GVP, and GVF accounts:

- 1,000 shares at approximately \$16.79 per share.
- 146 February 22, 2014 call options with a strike price of \$16 per share
- 200 February 22, 2014 call options with a strike price of \$17 per share
- 2,531 February 22, 2014 call options with a strike price of \$18 per share
- 2,000 February 22, 2014 call options with a strike price of \$19 per share
- 1,176 February 22, 2014 call options with a strike price of \$20 per share
- 1,866 February 22, 2014 call options with a strike price of \$21 per share

Respondents made these purchases knowing that they intended to issue a press release announcing their offer to purchase 51% of Barnes & Noble for \$22 per share and that the announcement would likely cause an increase in the price of Barnes & Noble stock.

15. At 1:20 p.m. on Friday, February 21, 2014, Respondents issued a press release through a press release distribution service stating that they had made a proposal to acquire 51% of Barnes & Noble, valuing the company at \$22 per share, approximately 30% above Barnes & Noble's current market price. Respondents' press release was misleading because it did not disclose material facts, including that:

- a. GAM had no ability to finance its purported purchase offer and no reasonable basis to believe it could finance its offer in the future; and
- b. Respondents intended to cause their client accounts to sell Barnes & Noble options and shares for a profit shortly after issuing the press release, which was contrary to the stated intent in the press release.

16. Seconds after Respondents issued the February 21, 2014 press release, the Barnes & Noble stock price rose from \$17.05 per share to \$18.99 per share. As a result of this quick spike of more than 10%, at 1:20 p.m., the NYSE automatically halted trading in Barnes & Noble for five minutes pursuant to its Rule 80C. After trading reopened at 1:25 p.m., the stock price fell to \$18.06 per share by 1:31 pm. When news outlets noted that several traders had questioned the ability of Respondents to complete a takeover of Barnes & Noble, the stock price fell further throughout the afternoon to close at \$17.69, but was still more than \$0.64 above the stock price before the press release was issued.

17. Respondents' February 21, 2014 press release caused a disruption in the market for Barnes & Noble stock as more than 12 million shares of Barnes & Noble were traded on February 21, 2014—with the vast majority trading after the press release was issued at 1:20 p.m.—compared to an average daily volume of 1.3 million shares over the preceding five trading days.

18. Shortly after the February 21, 2014 press release was issued, Respondents caused the GREP, GVP, and GVF accounts to make the following sales of Barnes & Noble securities in order to profit from the subsequent price spike:

- 2,000 shares at approximately \$17.96 per share
- 1,000 shares at approximately \$17.78 per share
- 1,739 February 22, 2014 call options with a strike price of \$17 per share
- 1,471 February 22, 2014 call options with a strike price of \$18 per share
- 30 March 22, 2014 call options with a strike price of \$13 per share
- 100 March 22, 2014 call options with a strike price of \$20 per share
- 60 March 22, 2014 call options with a strike price of \$21 per share

19. After the market closed on February 21, 2014, the GREP, GVP, and GVF accounts automatically exercised in-the-money call options to purchase 184,000 shares in Barnes & Noble including: (i) 20,000 shares at \$15 per share, (ii) 29,900 shares at \$16 per share, and (iii) 134,100 shares at \$17 per share. Because the GREP, GVP, and GVF accounts did not have sufficient margin to hold the shares, the accounts were required to sell securities to avoid a margin call. As a result, Respondents' investment funds sold 142,600 shares of Barnes & Noble stock on Monday, February 24, 2014, for a substantial profit.

20. As a result of the February 21, 2014 press release, the GREP, GVP, and GVF accounts reaped profits of \$168,000.

21. On Monday, February 24, 2014, Glickstein appeared on the Fox Business television channel. Glickstein stated that GAM had offered to purchase 51% of Barnes & Noble at \$22 per share and claimed that Barnes & Noble had been “very responsive” to GAM in the past.

22. However, Barnes & Noble had not given Respondents any indication that the Company was interested in pursuing a transaction with Respondents. Indeed, during a February 26, 2014 earnings call, Barnes & Noble’s president stated, “from what we could tell, from publicly available information G Asset Management has one employee extremely limited financial means and as set forth in his letter he has no debt or equity financing to support his proposal,” and said, “we do not consider it to be a proposal worthy of further discussion or action by us.”

F. RESPONDENTS’ PREVIOUS OVERTURES TO BARNES & NOBLE

23. Respondents had a history of making proposals to Barnes & Noble. On both April 6, 2011 and November 16, 2011, Glickstein wrote to Barnes & Noble’s board of directors suggesting that the company be split into three separate businesses.

24. The following year, Respondents filed a Schedule 13D on February 17, 2012, stating that they beneficially owned more than 5% of outstanding shares in Barnes & Noble—41,575 shares of common stock and 2,978,600 shares from options exercisable within 60 days. In the Schedule 13D filing, Respondents proposed that the Company spin off the NOOK business and attached a financial analysis in support of their opinion.

25. On February 22, 2012, Respondents filed an amended Schedule 13D, stating that they now beneficially owned less than 5% ownership of Barnes & Noble shares.

26. On March 16, 2012, Respondents proposed to Barnes & Noble that GAM would acquire “51% of the college bookstore business at a valuation for the whole segment of \$460 million,” claiming GAM would pay with cash, Barnes & Noble shares, and the assumption of up to \$410 million in Barnes & Noble debt. The offer also indicated that additional investors would be sought to join Respondents’ proposal.

27. On March 21, 2012, Barnes & Noble responded to Respondents’ proposal by stating it was not in the best interests of the Barnes & Noble shareholders to pursue the offer.

28. On November 15, 2013, when Barnes & Noble stock price closed at \$15.75 per share, Respondents sent a letter offering to acquire 51% of Barnes & Noble for \$20 per share, claiming: “We would undertake to arrange the equity and debt financing for the transaction. We anticipate that the cash and [Barnes & Noble] equity portion of the purchase price may come not only from ourselves but from additional investors.”

29. On November 15, 2013, Respondents’ investment funds beneficially owned approximately 50,000 Barnes & Noble shares—representing approximately .08% of the Company’s common shares. Increasing its ownership to 51% Barnes & Noble’s shares, would

have required GAM to raise approximately \$600 million to finance the acquisition. But Respondents had less than \$3 million in assets under management in November 2013 and had not received commitments from any third parties to finance or otherwise join Respondents in the acquisition of a majority stake in Barnes & Noble.

30. In advance of GAM's November 15, 2013 offer, Respondents had purchased more than 3,000 shares and nearly 4,000 call options with strike prices of \$15 and \$16 and an expiration date of November 16, 2013, in the GVP and GVF brokerage accounts. Though Respondents contacted Bloomberg on November 15, 2013, attempting to publicize this proposal, there does not appear to have been any published news about Respondents' November 15, 2013 offer at that time.

31. On November 22, 2013, Barnes & Noble responded to Respondents' proposal by stating it was not in the best interests of the Company's shareholders to pursue the offer.

* * *

32. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 9(b) of the Investment Company Act, and Sections 203(e) and 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent GAM is censured.

C. Respondent Glickstein be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Glickstein will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Glickstein, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Respondents shall, jointly and severally, pay disgorgement of \$168,000 and prejudgment interest of \$7,000. Payment of \$84,000 of the disgorgement and \$3,500 of prejudgment interest is due to the Commission within ten (10) business days of the entry of this Order for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). The remaining disgorgement owed of \$84,000 and prejudgment interest of \$3,500 shall be deemed satisfied and timely paid by Respondents' payment of disgorgement and prejudgment interest of \$87,500 as part of Respondents' resolution of the conduct at issue in the Order with the Office of the Attorney General of the State of New York (the "NYAG"). Within one business day of payment to the NYAG, Respondents shall supply to the Commission staff proof of such payment to the NYAG in a form acceptable to the Commission staff. In the event that Respondents' resolution with the NYAG results in a payment of less than \$87,500 in disgorgement and prejudgment interest, the Commission will credit Respondents with the actual amount in disgorgement and prejudgment interest paid in resolution of the NYAG matter, with the remaining balance due and payable to the Commission within ten (10) business days of the announcement of Respondents' resolution with the NYAG. If timely payment is not made to the Commission, additional interest shall accrue pursuant to SEC Rule of Practice 600. Respondent Glickstein shall also, within ten (10) business days of the entry of this Order, pay a civil penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment of the foregoing amounts must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying GAM and Glickstein as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph Sansone, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281-1022. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Glickstein agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Glickstein's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Glickstein agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent Glickstein by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Glickstein, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Glickstein under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Glickstein of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary