

BARNES & NOBLE INC

FORM 8-K (Current report filing)

Filed 09/20/17 for the Period Ending 09/19/17

Address	122 FIFTH AVE NEW YORK, NY, 10011
Telephone	2126333300
CIK	0000890491
Symbol	BKS
SIC Code	5940 - Retail-Miscellaneous Shopping Goods Stores
Industry	Other Specialty Retailers
Sector	Consumer Cyclical
Fiscal Year	05/29

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 20, 2017 (September 19, 2017)

BARNES & NOBLE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-12302
(Commission
File Number)

06-1196501
(IRS Employer
Identification No.)

122 Fifth Avenue, New York, New York
(Address of principal executive offices)

10011
(Zip Code)

Registrant's telephone number, including area code: (212) 633-3300

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

As noted below, at the 2017 Annual Meeting of Stockholders (the “Annual Meeting”) of Barnes & Noble, Inc. (the “Company”), the Company’s stockholders approved Proposal 6 relating to the declassification of the Company’s board of directors. Accordingly, on September 19, 2017, the Company (1) filed with the Delaware Secretary of State’s office a Certificate of Amendment to the Company’s Amended and Restated Certificate of Incorporation and (2) amended its Amended and Restated By-Laws. Such Certificate of Amendment to the Company’s Amended and Restated Certificate of Incorporation and such amendment to the Company’s Amended and Restated By-Laws are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The 2017 Annual Meeting of Stockholders (the “Annual Meeting”) of the Company was held on September 19, 2017. The voting results for each of the proposals submitted to a vote of the stockholders of the Company at the Annual Meeting are set forth below.

Election of Directors. The Company’s stockholders elected the Board’s nominees as Directors of the Company by the following vote:

Name	Votes For	Votes Withheld	Broker Non-Votes
Demos Parneros	59,383,417	1,575,161	8,346,971
Kimberley Van Der Zon	53,886,357	7,072,221	8,346,971
George Campbell, Jr.	54,126,108	6,832,470	8,346,971
Mark D. Carleton	22,060,771	38,897,807	8,346,971

Messrs. Parneros, Campbell and Carleton and Ms. Van Der Zon will hold office until the 2020 Annual Meeting of Stockholders of the Company and until their respective successors are elected and qualified.

Advisory (non-binding) Vote on Executive Compensation. The Company’s stockholders approved, on an advisory basis, compensation of the Company’s named executive officers by an affirmative vote of a majority of the votes cast on the proposal. The results of voting on the proposal are set forth below:

Votes For	Votes Against	Abstentions	Broker Non-Votes
34,986,977	25,822,258	149,343	8,346,971

Advisory (non-binding) Vote on Frequency of holding an advisory vote on Executive Compensation. The Company’s stockholders approved, on an advisory basis, the frequency of holding a vote on compensation of the Company’s named executive officers by an affirmative vote of a majority of the votes cast on the proposal. The results of voting on the proposal are set forth below:

One Year	Two Years	Three Years	Abstain	Broker Non-Votes
48,115,671	129,576	12,587,721	125,610	8,346,971

Re-Approval of the Performance Goals set forth in the Company's Amended and Restated 2009 Incentive Plan . The Company's stockholders re-approved the performance goals set forth in the Company's Amended and Restated 2009 Incentive Plan by the following vote:

Votes For	Votes Against	Abstentions	Broker Non-Votes
54,776,579	6,057,283	124,716	8,346,971

Ratification of the Appointment of Ernst & Young LLP as the Independent Registered Public Accountants of the Company for the Fiscal Year Ending April 28, 2018. The Company's stockholders approved the proposal by the following vote:

Votes For	Votes Against	Abstentions
68,932,833	188,085	184,631

Amendment to Company's Certificate of Incorporation and By-laws to declassify the Board. The Company's stockholders approved the amendments to the Company's Certificate of Incorporation and By-laws to declassify the Board by the following vote:

Votes For	Votes Against	Abstentions	Broker Non-Votes
60,718,490	149,740	90,348	8,346,971

Amendment to the Company's By-laws to implement majority voting in uncontested director elections. The Company's stockholders did not approve the amendment to the Company's By-laws to implement majority voting in uncontested director elections by the following vote:

Votes For	Votes Against	Abstentions	Broker Non-Votes
55,287,129	5,585,504	85,945	8,346,971

Proposal 7 relating to the implementation of majority voting in uncontested director elections did not receive the affirmative vote of at least 80% of the voting power of the shares of capital stock of the Company outstanding as of July 26, 2017 and entitled to vote generally in the election of directors, voting together as a single class, which was required to approve Proposal 7 in accordance with the Company's certificate of incorporation and by-laws. The Company will evaluate whether to submit such a proposal again at the Company's 2018 annual meeting of stockholders.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit</u>	<u>Description</u>
3.1	Certificate of Amendment to the Company's Amended and Restated Certificate of Incorporation
3.2	Amendment to the Company's Amended and Restated By-Laws

EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
3.1	Certificate of Amendment to the Company's Amended and Restated Certificate of Incorporation
3.2	Amendment to the Company's Amended and Restated By-Laws

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BARNES & NOBLE, INC.,

Date: September 20, 2017

By: /s/ Bradley A. Feuer

Name: Bradley A. Feuer

Title: Vice President, General Counsel & Corporate Secretary

**CERTIFICATE OF AMENDMENT
OF
THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BARNES & NOBLE, INC.**

(Pursuant to Sections 141 and 242 of the
General Corporation Law of the State of Delaware)

Barnes & Noble, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**Delaware General Corporation Law**”),

DOES HEREBY CERTIFY:

1. The name of the corporation is Barnes & Noble, Inc. (the “**Corporation**”).
2. Section (a) of ARTICLE SIXTH of the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

SIXTH: (a) The directors, other than those who may be elected by the holders of Common Stock or Preferred Stock pursuant to resolutions of the Board of Directors, adopted pursuant to the provisions of this Amended and Restated Certificate of Incorporation, establishing any series of Preferred Stock and granting to holders of shares of such series of Preferred Stock rights to elect additional directors under specified circumstances, shall be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, and each such director shall hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of his or her election, with the members of each class to hold office until their successors have been elected and qualified. Notwithstanding the foregoing, effective as of the annual meeting of stockholders to be held in 2018 (the “2018 Annual Meeting”), and at each annual meeting of stockholders thereafter, subject to any such rights granted to holders of such series of Preferred Stock to elect additional directors under specified circumstances, each director elected at and after the 2018 Annual Meeting shall be elected for a term expiring at the next succeeding annual meeting of stockholders and until such director’s successor shall have been elected and qualified; provided, however, that any director who prior to the 2018 Annual Meeting was elected to a term that continues beyond the date of the 2018 Annual Meeting (such term, a “Classified Term”), shall continue to serve as a director for the remainder of his or her elected Classified Term or until his or her death, resignation, disqualification or removal (each such director, including any director appointed to fill a vacancy caused by the death, resignation,

disqualification, removal or other cause of such director, a “Continuing Classified Director”; provided that any such director shall cease to be a Continuing Classified Director upon the expiration of the Classified Term to which he or she was most recently elected or appointed). As a result, effective as of the annual meeting of stockholders in 2020, the Board will no longer be classified under Section 141(d) of the General Corporation Law of the State of Delaware and directors shall no longer be divided into classes. Any director that is not a Continuing Classified Director may be removed with or without cause by the affirmative vote of the holders of a majority of the voting power of the Voting Stock, voting together as a single class. No director need be a stockholder.

3. This Certificate of Amendment has been duly adopted in accordance with the provisions of Sections 141 and 242 of the Delaware General Corporation Law.
4. All other provisions of the Corporation’s Amended and Restated Certificate of Incorporation, as amended, shall remain in full force and effect.

* * * * *

IN WITNESS WHEREOF, this Certificate of Amendment, having been duly adopted by the Corporation's Board of Directors and the Corporation's stockholders in accordance with Section 242 of the Delaware General Corporation Law, has been executed by its duly authorized officer this 19th day of September, 2017.

BARNES & NOBLE, INC.,

by 

Name: Bradley A. Feuer

Title: Vice President, General Counsel
and Corporate Secretary

AMENDMENT
TO
AMENDED AND RESTATED BY-LAWS
OF
BARNES & NOBLE, INC.

Section 2 of Article III of the Amended and Restated By-laws of Barnes & Noble, Inc. is hereby amended and restated to read in its entirety as follows:

SECTION 2. Terms and Vacancies. The directors, other than those who may be elected by the holders of any series of the Preferred Stock pursuant to a resolution of the Board adopted pursuant to the Certificate of Incorporation establishing such series, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board, and each such director shall hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of his or her election, with the members of each class to hold office until their successors have been elected and qualified. Notwithstanding the foregoing, effective as of the Annual Meeting to be held in 2018 (the "2018 Annual Meeting"), and at each Annual Meeting thereafter, subject to any such rights granted to holders of such series of Preferred Stock to elect additional directors under specified circumstances, each director elected at and after the 2018 Annual Meeting shall be elected for a term expiring at the next succeeding Annual Meeting and until such director's successor shall have been elected and qualified; provided, however, that any director who prior to the 2018 Annual Meeting was elected to a term that continues beyond the date of the 2018 Annual Meeting (such term, a "Classified Term"), shall continue to serve as a director for the remainder of his or her elected Classified Term or until his or her death, resignation, disqualification or removal (each such director, including any director appointed to fill a vacancy caused by the death, resignation, disqualification, removal or other cause of such director, a "Continuing Classified Director"; provided that any such director shall cease to be a Continuing Classified Director upon the expiration of the Classified Term to which he or she was most recently elected or appointed). As a result, effective as of the Annual Meeting in 2020, the Board will no longer be classified under Section 141(d) of the General Corporation Law of the State of Delaware and directors shall no longer be divided into classes. Each director elected or appointed to fill a vacancy shall hold office for the unexpired term in respect of which such vacancy occurred. Each director elected or appointed to fill any newly created directorship following the 2018 Annual Meeting shall hold office for a term expiring at the next Annual Meeting. Any director that is not a Continuing Classified Director may be removed with or without cause by the affirmative vote of the holders of a majority of the voting power of the Voting Stock, voting together as a single class. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.