

**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) October 28, 2022**

**BED BATH & BEYOND INC.**

(Exact name of registrant as specified in its charter)

**New York**  
(State or other jurisdiction  
of incorporation)

**0-20214**  
(Commission  
File Number)

**11-2250488**  
(I.R.S. Employer  
Identification No.)

**650 Liberty Avenue, Union, New Jersey 07083**  
(Address of principal executive offices) (Zip Code)

**(908) 688-0888**  
(Registrant's telephone number, including area code)

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))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, \$.01 par value	BBBY	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

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 8.01 Other Events.**

### *At-the-Market Offering Program*

On October 28, 2022, Bed Bath & Beyond Inc. (the “Company”) filed a prospectus supplement with the U.S. Securities and Exchange Commission (“SEC”) registering additional shares (“Shares”) of its common stock, par value \$0.01 per share (“Common Stock”) for sale under the Company’s “at the market offering” program (the “ATM Program”), pursuant to the Company’s existing Open Market Sale Agreement<sup>SM</sup> (the “Sale Agreement”) with Jefferies LLC (the “Sales Agent”), dated August 31, 2022. Prior to the date hereof, 12,000,000 Shares were sold under the Sale Agreement. The Shares will be sold pursuant to the Company’s shelf registration statement on Form S-3 (Registration No. 333-267173), which was filed with the SEC on August 31, 2022. A prospectus supplement relating to the ATM Program and the additional Shares available thereunder (the “Prospectus Supplement”) has been filed today with the SEC. Pursuant to the Prospectus Supplement and the accompanying base prospectus, the Company may offer and sell Shares having an aggregate sales price of up to \$150 million. The Company is not obligated to sell any Shares under the Sale Agreement, and may at any time suspend offers under the Sale Agreement or terminate the Sale Agreement. The Sales Agent will be entitled to compensation as provided under the terms of the Sale Agreement.

The Company made certain customary representations, warranties and covenants concerning the Company and its Common Stock in the Sale Agreement and agreed to provide indemnification and contribution to the Sales Agent against certain civil liabilities, including liabilities under the Act.

The Company currently intends to use the net proceeds, if any, after deducting the Sales Agent’s commission and the Company’s offering expenses, that it receives upon the issuance and sale of Shares to or through the Sales Agent for general corporate purposes, including to drive immediate strategic priorities such as rebalancing the Company’s assortment and inventory, and addressing the Company’s debt.

Subject to the terms and conditions of the Sale Agreement, the Sales Agent will use its commercially reasonable efforts to sell, on the Company’s behalf, the Shares that may be offered by the Company from time to time under the Sale Agreement. The sales, if any, of the Shares made under the Sale Agreement will be made by means of ordinary brokers’ transactions on the Nasdaq Global Select Market or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. Actual sales will depend on a variety of factors to be determined by the Company from time to time.

The above description of the Sale Agreement does not purport to be a complete statement of the parties’ rights and obligations under the Sale Agreement and is qualified in its entirety by reference to the terms of the form of Sale Agreement filed as Exhibit 1.1 hereto and incorporated herein by reference. The legal opinion of Cleary Gottlieb Steen & Hamilton LLP relating to the legality of the Shares is attached as Exhibit 5.1 to this Current Report on Form 8-K.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any sale of these securities in any state in which such offer, solicitation or sales would be unlawful prior to registration or qualification under the securities laws of any such state.

*Additional Disclosure*

In October 2022, the Company became aware that an outside party had improperly accessed, via a phishing scam, data on the hard drive and certain shared drives to which one of its employees had access. The Company is reviewing the accessed data to determine whether these drives contain any sensitive and/or personally identifiable information. At this time the Company has no reason to believe that any such sensitive or personally identifiable information was accessed or that this event would be likely to have a material impact on the Company.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits:

Exhibit No.	Description
1.1	<a href="#"><u>Open Market Sale Agreement<sup>SM</sup>, dated August 31, 2022, by and between Bed Bath &amp; Beyond Inc. and Jefferies LLC (incorporated by reference to Exhibit 1.1 to the Company's Form 8-K filed with the Commission on August 31, 2022).</u></a>
5.1	<a href="#"><u>Opinion of Cleary Gottlieb Steen &amp; Hamilton LLP.</u></a>
23.1	<a href="#"><u>Consent of Cleary Gottlieb Steen &amp; Hamilton LLP (included in Exhibit 5.1 hereto).</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

*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.

**BED BATH & BEYOND INC.**

(Registrant)

Date: October 28, 2022

By: /s/ Arlene Hong

Arlene Hong

Executive Vice President, Chief Legal Officer &  
Corporate Secretary

# CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza  
New York, NY 10006-1470  
T: +1 212 225 2000  
F: +1 212 225 3999

clearygottlieb.com

CRAIG B. BROD	MICHAEL J. ALBAND	ELANA S. BRONSON
RICHARD J. COOPER	VICTOR L. HOU	MANUEL SILVA
JEFFREY S. LEWIS	ROGER A. COOPER	KYLE A. HARRIS
PAUL J. SHIM	LILLIAN TSU	LINA BENSMAN
STEVEN L. WILNER	AMY R. SHAPIRO	ARON M. ZUCKERMAN
DAVID C. LOPEZ	JENNIFER KENNEDY PARK	KENNETH S. BLAZEJEWSKI
MICHAEL A. GERSTENZANG	ELIZABETH LENAS	MARK E. MCDONALD
LEV L. DASSIN	LUKE A. BAREFOOT	F. JAMAL FULTON
JORGE JUANTORENA	JONATHAN S. KOLODNER	PAUL V. IMPERATORE
MICHAEL D. WEINBERGER	DANIEL ILAN	CLAYTON SEMMONS
DAVID LEINWAND	MEYER H FEDIDA	CHARLES W. ALLEN
DIANA L. WOLLMAN	ADRIAN R. LEIPSIC	JULIA L. PETTY
JEFFREY A. ROSENTHAL	ELIZABETH VICENS	RESIDENT PARTNERS
MICHAEL D. DAYAN	ADAM J. BRENNEMAN	JUDITH KASSEL
CARMINE D. BOCCUZZI, JR.	ARI D. MACKINNON	PENELOPE L. CHRISTOPHOROU
JEFFREY D. KARP	JAMES E. LANGSTON	BOAZ S. MORAG
KIMBERLY BROWN BLACKLOW	JARED GERBER	HEIDE H. ILGENFRITZ
FRANCISCO L. GESTERO	RISHI ZUTSHI	ANDREW WEAVER
FRANCESCA L. ODELL	JANE VANLARE	HELENA K. GRANNIS
WILLIAM L. MCRAE	AUDRY X. CASUSOL	JOHN V. HARRISON
JASON FACTOR	ELIZABETH DYER	MATTHEW BRIGHAM
JOON H. KIM	DAVID H. HERRINGTON	EMILIO MINVIELLE
MARGARET S. PEONIS	KIMBERLY R. SPOERRI	LAURA BAGARELLA
LISA M. SCHWEITZER	AARON J. MEYERS	JONATHAN D.W. GIFFORD
JUAN G. GIRALDEZ	DANIEL C. REYNOLDS	SUSANNA E. PARKER
DUANE MCLAUGHLIN	ABENA A. MAINOO	DAVID W.S. YUDIN
CHANTAL E. KOROULA	HUGH C. CONROY, JR	KARA A. HAILEY
BENET J. O'REILLY	JOHN A. KUPIEC	ANNA KOGAN
ADAM E. FLEISHER	JOSEPH LANZKRON	BRANDON M. HAMMER
SEAN A. O'NEAL	MAURICE R. GINDE	RESIDENT COUNSEL
GLENN P. MCGRORY	KATHERINE R. REAVES	
MATTHEW P. SALERNO	RAHUL MUKHI	

**AMERICAS**  
NEW YORK  
SAN FRANCISCO  
SÃO PAULO  
SILICON VALLEY  
WASHINGTON, D.C.

**ASIA**  
BEIJING  
HONG KONG  
SEOUL

**EUROPE & MIDDLE EAST**  
ABU DHABI  
BRUSSELS  
COLOGNE  
FRANKFURT  
LONDON  
MILAN  
PARIS  
ROME

D: +1 212 225 2632  
dlopez@cgsh.com

October 28, 2022

Bed Bath & Beyond Inc.  
650 Liberty Avenue  
Union, New Jersey 07083

Ladies and Gentlemen:

We have acted as counsel to Bed Bath & Beyond Inc., a New York corporation (the “Company”), in connection with its proposed offering pursuant to a registration statement on Form S-3, as amended as of its most recent effective date (October 28, 2022), insofar as it relates to the Securities (as defined below) (as determined for purposes of Rule 430B(f)(2) under the Securities Act of 1933, as amended (the “Securities Act”)) (as so amended, including the documents incorporated by reference therein, the “Registration Statement”), and the prospectus, dated August 31, 2022 (the “Base Prospectus”), as supplemented by the prospectus supplement thereto, dated October 28, 2022 (the “Prospectus Supplement” and, together with the Base Prospectus, the “Prospectus”), of up to \$150,000,000 aggregate sales price of shares of the Company’s common stock, par value \$0.01 per share (the “Securities”), under an “at-the-market offering” program (the “Program”).

In arriving at the opinion expressed below, we have reviewed the following documents:

- (a) the Registration Statement;
- (b) the Prospectus;
- (c) an executed copy of the Open Market Sale Agreement<sup>SM</sup> relating to the Program dated August 31, 2022 (the “Sales Agreement”), between the Company and Jefferies LLC; and
- (d) copies of the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws certified by the Secretary of State of the State of New York and the corporate secretary of the Company, respectively

Clearly Gottlieb Steen & Hamilton LLP or an affiliated entity has an office in each of the locations listed above.

In addition, we have reviewed the originals or copies certified or otherwise identified to our satisfaction of all such corporate records of the Company and such other documents, and we have made such investigations of law, as we have deemed appropriate as a basis for the opinion expressed below.

In rendering the opinion expressed below, we have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. In addition, we have assumed and have not verified the accuracy as to factual matters of each document we have reviewed.

Based on the foregoing, and subject to the further assumptions and qualifications set forth below, it is our opinion that when issued, sold and paid for in accordance with the terms of the Sales Agreement, the Securities will be validly issued by the Company and fully paid and nonassessable.

In rendering the foregoing opinion, we have assumed the accuracy of, and compliance with, the representations, warranties and covenants contained in the Sales Agreement relating to the offer and sale of the Securities.

The foregoing opinion is limited to the Business Corporation Law of the State of New York.

We hereby consent to the use of our name in the Prospectus Supplement under the heading “Legal Matters” as counsel for the Company that has passed on the validity of the Securities and to the filing of this opinion letter as Exhibit 5.1 to the Company’s Current Report on Form 8-K dated October 28, 2022. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder.

The opinion expressed herein is rendered on and as of the date hereof, and we assume no obligation to advise you or any other person, or to make any investigations as to any legal developments or factual matters arising subsequent to the date hereof that might affect the opinion expressed herein.

Very truly yours,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: /s/ David Lopez

\_\_\_\_\_  
David Lopez, a Partner