

GAMCO INVESTORS, INC. ET AL
Form POS462B
November 25, 2013

As filed with the Securities and Exchange Commission on November 25, 2013.

Registration No. 333-136428 and 333-141446

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

Post Effective Amendment No. 1
to
FORM S-3
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

GAMCO Investors, Inc.

(Exact name of Registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of incorporation or
organization)

13-4007862
(I.R.S. Employer
Identification No.)

ONE CORPORATE CENTER
RYE, NEW YORK 10580
(914) 921-3700
(Address, Including Zip Code, and Telephone Number,
Including Area Code, of Registrant's Principal Executive Offices)

KEVIN HANDWERKER
GAMCO INVESTORS, INC.
ONE CORPORATE CENTER
RYE, NEW YORK 10580
(914) 921-3700
(Name, Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent for Service)

Copy to:
STEVE WOLOSKY, ESQ.
OLSHAN FROME WOLOSKY LLP

65 EAST 55TH STREET
NEW YORK, NY 10022-1106
(212) 451-2300

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this Registration Statement as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please 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 statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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. (Check one):

| | | |
|-------------------------|---|--------------------------|
| | Accelerated | |
| Large accelerated filer | <input checked="" type="checkbox"/> filer | <input type="checkbox"/> |
| | Smaller reporting | |
| Non-accelerated filer | <input type="checkbox"/> company | <input type="checkbox"/> |

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered(1) | Amount to be Registered(1) | Proposed Maximum Offering Price Per Unit(1) | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee(1) |
|---|----------------------------|---|--|-------------------------------|
| Class A Common Stock | N/A | N/A | N/A | N/A |

(1) The Registrant is not registering additional securities. Registration fees were originally paid by the Registrant's predecessor-in-interest upon filing of the original registration statement on Form S-3 (File No. 333-136428) and registration statement on Form S-3 (File No. 333-141446). Consequently, no additional registration fees are required with respect to the filing of this Post-Effective Amendment No. 1.

Explanatory Note

Effective as of November 22, 2013, GAMCO Investors, Inc. changed its state of incorporation from the State of New York to the State of Delaware. This reincorporation was effectuated by a merger (the “Reincorporation Merger”) of GAMCO Investors, Inc., a New York corporation (“GAMCO New York”), with and into GAMCO Investors, Inc., a Delaware corporation (“GAMCO Delaware”), then a wholly owned Delaware subsidiary established for such purpose. The Reincorporation Merger was approved by the requisite vote of shareholders at GAMCO New York’s Special Meeting of Shareholders on November 20, 2013. GAMCO Delaware is deemed to be the successor issuer of GAMCO New York under Rule 12g-3 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). GAMCO New York and GAMCO Delaware, as issuer and successor issuer, respectively, under Rule 12g-3 of the Exchange Act, are collectively referred to herein as the “Registrant,” with references to the “Registrant” meaning GAMCO New York prior to the Reincorporation Merger and GAMCO Delaware after the Reincorporation Merger.

The Registrant is filing this Post-Effective Amendment No. 1 to the registration statement on Form S-3, File No. 333-136428 filed with the Commission on August 9, 2006, and registration statement on Form S-3 File No. 333-141446 filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) on March 20, 2007 pursuant to Rule 462(b) (relating to the registration statement on Form S-3, File No. 333-136428) and amended on Form S-3/A filed on March 21, 2007 (collectively the “Registration Statements”), pursuant to Rule 414 under the Securities Act of 1933, as amended (the “Securities Act”), solely to update the Registration Statements as a result of the Registrant’s reincorporation in the State of Delaware from the State of New York via the Reincorporation Merger.

In accordance with Rule 414(d) under the Securities Act, except as modified by this Post-Effective Amendment No. 1, the Registrant, now as successor issuer to GAMCO New York pursuant to Rule 12g-3 of the Exchange Act, hereby expressly adopts the Registration Statements as its own registration statement for all purposes of the Securities Act and the Exchange Act, as updated by subsequent filings under the Exchange Act, including, but not limited to, the Registrant’s most recent annual report on Form 10-K and the description of the common stock of the Registrant as set forth in the registration statement on Form 8-A/A, filed by the Registrant with the Commission on November 22, 2013. The applicable registration fees were paid at the time of the original filing of the Registration Statements.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The information set forth in this item is incorporated by reference from Item 14 of the Registrant's registration statement on Form S-3, File No. 333-136428 filed with the SEC on August 9, 2006.

Item 15. Indemnification of Directors and Officers.

The Registrant's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") provides that to the fullest extent permitted by the General Corporation Law of the State of Delaware ("DGCL") no director of the Registrant will be personally liable to the Registrant or its shareholders for monetary damages for breach of fiduciary duty as a director except for liability: (i) for any breach of the director's duty of loyalty to the Registrant or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL (unlawful payments of dividends or unlawful stock repurchases or redemptions); or (iv) for any transaction from which the director derived any improper personal benefit. The Certificate of Incorporation provides further that, to the fullest extent permitted by law, the Registrant shall indemnify and hold harmless and advance expenses to any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Registrant or any predecessor of the Registrant, or serves or served at any other enterprise as a director or officer at the request of the Registrant, any predecessor to the Registrant or any subsidiary or affiliate of the Corporation.

Section 145 of the DGCL provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent of the corporation. Section 145 of the DGCL also provides that expenses (including attorneys' fees) incurred by a director or officer in defending an action may be paid by a corporation in advance of the final disposition of an action if the director or officer undertakes to repay the advanced amounts if it is determined such person is not entitled to be indemnified by the corporation. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions, or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant's Amended and Restated By-Laws (the "By-Laws") provide that the Registrant shall indemnify any person who was or is a party to any threatened, pending, or completed action, suit or proceeding because he or she is or was a director, officer, employee or agent of the Registrant or is or was serving at the request of the Registrant as a director or officer of another corporation, partnership or other enterprise, or as a trustee, fiduciary or administrator of any pension, profit sharing or other benefit plan for any of the Registrant's employees, against expenses (including attorneys' fees), judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good

faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful.

The Registrant's power to indemnify also applies to actions brought by or in the right of the Registrant, but only against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Registrant; provided, however, that no indemnification will be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Registrant unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

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The indemnification and advancement of expenses provided by, or granted pursuant to, the Certificate of Incorporation, By-Laws and applicable law are not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-law, agreement, vote of stockholders or disinterested directors, or otherwise.

Item 16. List of Exhibits.

The Exhibits to this registration statement are listed in the Index to Exhibits following the signature page to this registration statement.

Item 17. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) 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 of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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

Provided, however,

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.
- (3) 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.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the 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.
- (c) The undersigned registrant hereby undertakes that, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(ii) If the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant

has been advised that in the opinion of the Securities and Exchange 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 Act and will be governed by the final adjudication of such issue.

- (e) The undersigned registrant hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
 - (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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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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-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rye, State of New York on November 22, 2013.

GAMCO INVESTORS, INC.

By: /s/ Robert S. Zuccaro
 Name: Robert S. Zuccaro
 Title: Executive Vice-President
 and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| SIGNATURE | TITLE | DATE |
|--|--|-------------------|
| * Mario J. Gabelli | Chairman of the Board, Chief Executive Officer (Principal Executive Officer) and Director | November 22, 2013 |
| /s/ Robert S. Zuccaro Robert S. Zuccaro | Executive Vice-President and Chief Financial Officer (Principal Financial Officer) | November 22, 2013 |
| * Kieran Caterina | Co-Chief Accounting Officer (Co-Principal Accounting Officer) | November 22, 2013 |
| * Diane M. LaPointe | Co-Chief Accounting Officer (Co-Principal Accounting Officer) | November 22, 2013 |
| * Edwin L. Artzt | Director | November 22, 2013 |
| * Raymond C. Avansino, Jr. | Director | November 22, 2013 |
| Richard L. Bready | Director | November 22, 2013 |
| * Eugene R. McGrath | Director | November 22, 2013 |
| * Robert S. Prather, Jr. | Director | November 22, 2013 |
| * Elisa M. Wilson | Director | November 22, 2013 |

*By: /s/ Robert S.
Zuccaro
Robert S. Zuccaro
(Attorney-in-Fact
pursuant to Power
of Attorney filed
herewith)

EXHIBIT INDEX

| Exhibit No. | Description of Exhibits |
|-------------|--|
| 4.1 | Registration Rights Agreement, dated as of May 31, 2006, by and between GAMCO Investors, Inc. and Frederick J. Mancheski and David M. Perlmutter (incorporated by reference to Exhibit 10.2 to the Quarterly Report of GAMCO Investors, Inc. on Form 10-Q for the quarter ended June 30, 2006, filed with the Securities and Exchange Commission on August 7, 2006). |
| 4.2* | Exchange and Standstill Agreement, dated as of May 31, 2006, by and between GAMCO Investors, Inc. and Frederick J. Mancheski. |
| 4.3* | Exchange and Standstill Agreement, dated as of May 31, 2006, by and between GAMCO Investors, Inc. and David M. Perlmutter. |
| 5.1+ | Opinion of Thomas J. Hearity, Acting General Counsel and Secretary of GAMCO Investors, Inc. |
| 23.1+ | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.2+ | Consent of Thomas J. Hearity (included in Exhibit 5.1). |
| 24.1+ | Power of Attorney. |

+ Filed herewith.

* Previously filed.