

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): February 24, 2021

GI DYNAMICS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-55195
(Commission
File Number)

84-1621425
(IRS Employer
Identification No.)

320 Congress Street
Boston, MA 02210
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (781) 357-3300

(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))

Securities registered pursuant to Section 12(b) of the Act: None.

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 1.01 Entry into a Material Definitive Agreement.

Fifth Amendment and Waiver to Series A Preferred Stock Purchase Agreement

Effective as of February 24, 2021, GI Dynamics, Inc. (the “Company”) entered into a Fifth Amendment and Waiver (the “Amendment”) to the Series A Preferred Stock Purchase Agreement (as amended, the “Purchase Agreement”), by and between the Company and Crystal Amber Fund Limited, as the purchaser (“Crystal Amber”), pursuant to which the Company and Crystal Amber agreed to (i) set certain closing dates of the additional offerings of Series A Preferred Stock under the Purchase Agreement and (ii) waive certain conditions to the closing of such additional offerings as required under the Purchase Agreement

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, a copy of which is attached hereto as Exhibit 10.1, and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1*	Fifth Amendment and Waiver to Series A Preferred Stock Purchase Agreement, effective as of February 24, 2021, between GI Dynamics and Crystal Amber Fund Limited.

* Filed herewith.

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 hereunto duly authorized.

GI DYNAMICS, INC.

Dated: March 9, 2021

/s/ Charles R. Carter

Charles R. Carter

Chief Financial Officer

GI DYNAMICS, INC.

FIFTH AMENDMENT AND WAIVER TO SERIES A PREFERRED STOCK PURCHASE AGREEMENT

THIS FIFTH AMENDMENT AND WAIVER (this “*Amendment*”), dated effective as of February 24, 2021, is made to that certain **SERIES A PREFERRED STOCK PURCHASE AGREEMENT**, dated August 10, 2020, as amended on October 31, 2020, on November 30, 2020, on December 22, 2020 and on January 29, 2021 (as so amended, the “*Agreement*”), by and between **GI DYNAMICS, INC.**, a Delaware corporation (the “*Company*”), and the investors listed on Exhibit A attached to the Agreement (the “*Purchasers*”). Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Agreement.

WHEREAS, pursuant to Section 6.11 of the Agreement, any term of the Agreement may be amended, waived or modified only with the written consent of the Company and the holders of at least a majority of the then-outstanding Shares; and

WHEREAS, the Company and the Purchaser holding a majority of the outstanding Shares, as of the date hereof, desire to (i) further amend the Agreement to set certain dates on which the Closings for the sale of Additional Shares shall occur and (ii) waive certain conditions to such Closings as required under the Agreement.

NOW, THEREFORE, the undersigned Purchaser and the Company, in consideration of the mutual premises and covenants made herein and of the mutual benefits to be derived herefrom, hereby agree as follows:

1. Amendment to Section 1.3 of the Agreement. Section 1.3 of the Agreement is hereby amended and restated as follows:

“(a) After the Initial Closing, the Company shall sell, on the same terms and conditions as those contained in this Agreement, up to 56,414,306 additional shares (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization affecting such shares) of Series A Preferred Stock (the “**Additional Shares**”), to one or more purchasers (the “**Additional Purchasers**”) acceptable to Crystal Amber Fund Limited (“**Crystal Amber**”) in its sole discretion, provided that each Additional Purchaser becomes a party to the Transaction Agreements (as defined below), by executing and delivering a counterpart signature page to each of the Transaction Agreements. Notwithstanding the foregoing, Crystal Amber agrees that it will purchase the Additional Shares at additional Closings as follows: (i) on March 4, 2021 for 16,924,292 Additional Shares in exchange for \$1,500,000; (ii) by March 25, 2021 for 11,282,861 Additional Shares in exchange for \$1,000,000; and (iii) by May 28, 2021 for 28,207,153 Additional Shares in exchange for \$2,500,000. The number of Additional Shares to be purchased by Crystal Amber at each remaining additional Closing, as set forth in the preceding sentence, shall be appropriately reduced upon, and to reflect, the sale of any Additional Shares by the Company to one or more purchasers other than Crystal Amber. The Schedule of Purchasers provided in Exhibit A to this Agreement shall be updated to reflect the number of Additional Shares purchased at each such Closing and the parties purchasing such Additional Shares.

(b) [DELETED].”

2. Waiver of Certain Closing Conditions. The undersigned Purchaser hereby waives, as conditions to such Purchaser’s obligation to purchase Additional Shares at each additional Closing, the Company’s fulfillment on or before such additional Closing of (a) the condition set forth in Section 4.3 of the Agreement with respect to delivery of a compliance certificate and (b) the condition set forth in Section 4.11 of the Agreement with respect to delivery of a secretary’s certificate.
3. Except as expressly modified by this Amendment, the Agreement shall remain unmodified and in full force and effect.
4. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Facsimile or PDF transmission of execution copies or signature pages for this Amendment shall be legal, valid and binding execution and delivery for all purposes.
5. This Amendment shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Delaware, without regard to its principles of conflicts of laws.

(Signatures Pages Immediately Follow)

IN WITNESS WHEREOF, the undersigned party has executed this Amendment as of the date first written above.

COMPANY:

GI DYNAMICS, INC.

By: /s/ Charles R. Carter
Name: Charles R. Carter
Title: CFO, Secretary, Treasurer

IN WITNESS WHEREOF, the undersigned party has executed this Amendment as of the date first written above.

PURCHASER:

CRYSTAL AMBER FUND LIMITED

By: Crystal Amber Asset Management (Guernsey) Limited, as
Investment Manager

By: /s/ Laurence McNairn
Name: Laurence McNairn
Title: Director
