

NovaBay Pharmaceuticals, Inc.

Form S-8

March 29, 2012

As filed with the Securities and Exchange Commission on March 29, 2012

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

NovaBay Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of

incorporation or organization)

68-0454536

(I.R.S. Employer Identification No.)

5980 Horton Street, Suite 550

Emeryville, CA 94608

(510) 899-8800

(Address, including zip code, of Principal Executive Offices)

2007 Omnibus Incentive Plan

(Full title of the plan)

Ramin (Ron) Najafi, Ph.D.
Chief Executive Officer
5980 Horton Street, Suite 550
Emeryville, CA 94608
(510) 899-8800

(Name, address, and telephone number, including area code, of agent for service)

Copies to:

Brett D. White
Cooley llp
3175 Hanover Street
Palo Alto, CA 94304-1130
(650) 843-5000

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):

Large accelerated filer
 Accelerated filer
 Non-accelerated filer
 Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be registered(1)	Proposed maximum	Proposed maximum	Amount of registration fee
		offering price per share(2)	aggregate offering price	
Common Stock, \$0.01 par value per share	1,000,000	\$1.36	\$1,360,000	\$156

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(1) This represents an increase in the number of shares of common stock of the registrant reserved for issuance under the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan pursuant to an evergreen provision contained therein. In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued resulting from stock splits, stock dividends, recapitalization or other similar transactions.

(2) Represents the average of the high and low prices of the Common Stock on March 22, 2012 as reported by NYSE AMEX LLC., and is set forth solely for the purpose of calculating the filing fee pursuant to Rules 457(c) and 457(h) under the Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 registers the offer and sale of 1,000,000 shares of Common Stock of NovaBay Pharmaceuticals, Inc. (the Company) for issuance under the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended and restated (the Plan). The contents of the prior Registration Statements on Form S-8 filed with the Securities and Exchange Commission (the Commission) on November 13, 2007, January 30, 2009 and January 22, 2010 (File Nos. 333-147334, 333-157041 and 333-164469, respectively), Post-Effective Amendments No. 1 to Registration Statements on Form S-8 filed with the Commission on June 30, 2010 (File Nos. 333-147334, 333-157041 and 333-164469), and the prior Registration Statement on Form S-8 filed with the Commission on January 31, 2011 (File No. 333-171981), relating to the Plan, are incorporated herein by reference.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission are incorporated by reference into this Registration Statement:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 2011, as filed on March 27, 2012.
2. The Company's Current Reports on Form 8-K filed on January 12, 2012 and February 23, 2012.
3. The description of the Company's Common Stock which is contained in the Company's Current Report on Form 8-K filed on June 29, 2010.

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this registration statement from the date of the filing of such reports and documents (other than current reports furnished pursuant to Form 8-K).

Item 8. Exhibits.

Exhibit No.	Description of Document
3.1(1)	Amended and Restated Certificate of Incorporation
3.2(1)	Amended and Restated Bylaws
4.1	Reference is made to Exhibits 3.1 and 3.2 above.
5.1	Opinion of Cooley llp
23.1	Consent of OUM & Co. LLP
23.2	Consent of Davidson & Company LLP
23.3	Consent of Cooley llp (included in Exhibit 5.1)
24.1	Power of Attorney (included in Part II of this Registration Statement)
99.1(2)	NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended
99.2(3)	Forms of agreements for use under the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended

(1) Incorporated by reference to the exhibits of the same numbers from the Company's report on Form 8-K as filed with the SEC on June 29, 2010 (SEC File No. 001-33678).

(2) Incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008 (File No. 001-33678) as filed with the Commission on August 14, 2008.

(3) Incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-1 (File No. 333-140714) as filed with the Securities and Exchange Commission on May 29, 2007, as amended.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Emeryville, State of California on March 23, 2012.

NovaBay Pharmaceuticals, Inc.

By: /s/ Ramin (Ron) Najafi, Ph.D.
 Ramin (Ron) Najafi, Ph.D.
 Chairman of the Board, President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each of the undersigned officers and directors does hereby constitute and appoint Ramin Najafi, Ph.D., Thomas J. Paulson and Theresa Granados Uriarte, and each of them, or their substitute or substitutes, as his or her true and lawful attorneys-in-fact and agents, with full power and authority to do any and all acts and things and to execute and file or cause to be filed any and all instruments, documents or exhibits which said attorneys and agents, or any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this registration statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this registration statement, to any and all amendments, both pre-effective and post-effective, and supplements to this registration statement and to any and all instruments, documents or exhibits filed as part of or in conjunction with this registration statement or amendments or supplements thereof, with the powers of substitution and revocation, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, or their substitute or substitutes, shall lawfully do or cause to be done by virtue hereof. In witness whereof, each of the undersigned has executed this Power of Attorney as of the dates indicated below.

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

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/s/ Ramin (Ron) Najafi, Ph.D. Ramin (Ron) Najafi, Ph.D.	Chairman of the Board, Chief Executive Officer and President (<i>principal executive officer</i>)	March 23, 2012
/s/ Thomas J. Paulson Thomas J. Paulson	Chief Financial Officer and Treasurer (<i>principal financial and accounting officer</i>)	March 27, 2012
/s/ Charles J. Cashion Charles J. Cashion	Director	March 27, 2012
/s/ Anthony Dailley, D.D.S. Anthony Dailley, D.D.S.	Director	March 23, 2012
/s/ Paul E. Freiman Paul E. Freiman	Director	March 27, 2012
/s/ Gail J. Maderis Gail J. Maderis	Director	March 23, 2012
/s/ T. Alex McPherson, M.D., Ph.D. T. Alex McPherson, M.D., Ph.D.	Director	March 23, 2012
/s/ Robert R. Tufts Robert R. Tufts	Director	March 22, 2012
/s/ Tony D.S. Wicks Tony D.S. Wicks	Director	March 22, 2012

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