

NovaBay Pharmaceuticals, Inc.

Form S-8

June 16, 2014

As filed with the Securities and Exchange Commission on June 13, 2014. 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 (Do not check if a smaller reporting company)	Smaller reporting company
-------------------------	-------------------	--	---------------------------

1.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.01 par value per share	1,216,138	\$0.89	\$1,078,410	\$138.90

(1) This represents the remainder of the 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, not previously registered by the Company on its Registration Statement on Form S-8 filed with the Securities and Exchange Commission March 7, 2014. 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 June 5, 2014, as reported by NYSE MKT 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 1,218,298 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 March 7, 2014, November 13, 2007, January 30, 2009, and January 22, 2010 (File Nos. 333-194383, 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 Statements on Form S-8 filed with the Commission on January 31, 2011, March 29, 2012, and January 14, 2013 (File Nos. 333-171981, 333-180461, and 333-185998), 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, 2013, as filed on March 6, 2014, and Amendment No. 1 thereto on Form 10-K/A filed on March 14, 2014.
2. The information specifically incorporated by reference into the Form 10-K from the Company's definitive proxy statement on Schedule 14A which was filed with the SEC on April 25, 2014.
3. The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014 as filed on May 1, 2014.
4. The Company's Current Reports on Form 8-K filed on January 9, 2014, March 20, 2014, April 18, 2014, and June 4, 2014 and Form 8-K/A filed on January 22, 2014.
5. 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).

2.

Item 8. Exhibits.

Exhibit No.	Description of Document
3.1(1)	Amended and Restated Certificate of Incorporation
3.2(2)	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.3(1)	Amended and Restated Bylaws
4.1	Reference is made to Exhibits 3.1, 3.2 , and 3.3 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(3)	NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended
99.2(4)	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 (File No. 001-33678) as filed with the Commission on June 29, 2010.

(2) Incorporated by reference to Exhibit 3.1 from the Company's report on Form 8-K (File No. 001-33678) as filed with the Commission on June 4, 2014.

(3) Incorporated by reference to the Plan as attached to the Company's definitive proxy statement on Schedule 14A (File No. 001-33678) as filed with the Commission on April 26, 2012.

(4) 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 Commission on May 29, 2007, as amended.

3.

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 June 12, 2014.

NovaBay Pharmaceuticals, Inc.

/s/ Ramin Najafi

Ramin (“Ron”) Najafi, Ph.D.
Chairman of the Board, President
and Chief Executive Officer

4.

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 Justin Hall, 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
/s/ Ramin Najafi Ramin ("Ron") Najafi, Ph.D.	Chairman of the Board, Chief Executive Officer and President (<i>principal executive officer</i>)	June 13, 2014
/s/ Thomas Paulson Thomas J. Paulson	Chief Financial Officer and Treasurer (<i>principal financial and accounting officer</i>)	June 13, 2014
/s/ Charles Cashion Charles J. Cashion	Director	June 13, 2014

/s/ Paul Freiman
Paul E. Freiman
Director
June 13, 2014

/s/ Gail Maderis
Gail J. Maderis
Director
June 13, 2014

/s/ Alex McPherson
T. Alex McPherson,
M.D., Ph.D.
Director
June 13, 2014

/s/ Massimo Radaelli
Massimo Radaelli
Director
June 13, 2014

/s/ Mark Sieczkarek
Mark M. Sieczkarek
Director
June 13, 2014

/s/ Tony Wicks
Tony D.S. Wicks
Director
June 13, 2014

5.

EXHIBIT INDEX

Exhibit No.	Description of Document
3.1(1)	Amended and Restated Certificate of Incorporation
3.2(2)	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.3(1)	Amended and Restated Bylaws
4.1	Reference is made to Exhibits 3.1, 3.2 , and 3.3 above
5.1	Opinion of Cooley llp
23.1	Consent of OUM and 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(3)	NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended
99.2(4)	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 (SEC File No. 001-33678) as filed with the Commission on June 29, 2010.

(2) Incorporated by reference to Exhibit 3.1 from the Company's report on Form 8-K (File No. 001-33678) as filed with the Commission on June 4, 2014.

(3) Incorporated by reference to the Plan as attached to the Company's definitive proxy statement on Schedule 14A (File No. 001-33678) as filed with the Commission on April 26, 2008.

(4) 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 Commission on May 29, 2007, as amended.

6.