

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2013-01-14**  
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### FILER

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**NovaBay Pharmaceuticals, Inc.**

CIK: [1389545](#) | IRS No.: [680454536](#) | State of Incorporation: **CA** | Fiscal Year End: **0120**  
Type: **S-8** | Act: **33** | File No.: [333-185998](#) | Film No.: [13526422](#)  
SIC: **2834** Pharmaceutical preparations

Mailing Address  
*5980 HORTON STREET  
SUITE 550  
EMERYVILLE CA 94608*

Business Address  
*5980 HORTON STREET  
SUITE 550  
EMERYVILLE CA 94608  
(510) 899-8800*

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

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**FORM S-8**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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**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.)

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**5980 Horton Street, Suite 550**  
**Emeryville, CA 94608**  
**(510) 899-8800**

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

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**2007 Omnibus Incentive Plan**  
(Full title of the plan)

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**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)

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Copies to:  
**Brett D. White**  
**Cooley LLP**  
**3175 Hanover Street**  
**Palo Alto, CA 94304-1130**  
**(650) 843-5000**

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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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be registered(1)</b>	<b>Proposed maximum offering price per share(2)</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Common Stock, \$0.01 par value per share	1,478,924	\$1.165	\$1,722,946	\$235.01

(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 January 10, 2013, 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 1,478,924 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 Statements on Form S-8 filed with the Commission on January 31, 2011, and March 29, 2012 (File Nos. 333-171981 and 333-180461), 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.  
The Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, as filed on November 1, 2012; the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, as filed on August 9, 2012; and the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2012, as filed on May 3, 2012.
- 2.
3. The Company’s Current Reports on Form 8-K filed on January 12, 2012, February 23, 2012, June 18, 2012, September 17, 2012, October 16, 2012, November 5, 2012, November 21, 2012, and December 6, 2012.
4. 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.

<b>Exhibit No.</b>	<b>Description of Document</b>
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

Exhibit No.	Description of Document
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 (File No. 001-33678) as filed with the Commission on June 29, 2010.
- (2) Incorporated by reference to the 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.
- (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 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 January 10, 2013.

**NovaBay Pharmaceuticals, Inc.**

/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:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ramin ("Ron") Najafi, Ph.D.</u> Ramin ("Ron") Najafi, Ph.D.	Chairman of the Board, Chief Executive Officer and President ( <i>principal executive officer</i> )	January 10, 2013
<u>/s/ Thomas J. Paulson</u> Thomas J. Paulson	Chief Financial Officer and Treasurer ( <i>principal financial and accounting officer</i> )	January 10, 2013
<u>/s/ Charles J. Cashion</u> Charles J. Cashion	Director	January 10, 2013
<u>/s/ Anthony Dailley, D.D.S.</u> Anthony Dailley, D.D.S.	Director	January 10, 2013

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Paul E. Freiman</u> Paul E. Freiman	Director	January 10, 2013
<u>/s/ Gail J. Maderis</u> Gail J. Maderis	Director	January 10, 2013
<u>/s/ T. Alex McPherson, M.D., Ph.D.</u> T. Alex McPherson, M.D., Ph.D.	Director	January 10, 2013
<u>/s/ Robert R. Tufts</u> Robert R. Tufts	Director	January 10, 2013
<u>/s/ Tony D.S. Wicks</u> Tony D.S. Wicks	Director	January 10, 2013

## EXHIBIT INDEX

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  - (2) 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.
  - (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 Commission on May 29, 2007, as amended.





Nancy H. Wojtas  
T: +1 650 843 5819  
nwojtas@cooley.com

January 11, 2013

NovaBay Pharmaceuticals, Inc.  
5980 Horton Street, Suite 550  
Emeryville, CA 94608

RE: S-8 REGISTRATION STATEMENT

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by NovaBay Pharmaceuticals, Inc. a Delaware corporation (the "**Company**") of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,478,924 shares of the Company's Common Stock (the "**Shares**") to be issued pursuant to the Company's 2007 Omnibus Incentive Plan (the "**Plan**").

In connection with this opinion, we have examined the Registration Statement and related Prospectus, your Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof, and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plan, the Registration Statement and related Prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

**COOLEY LLP**

By: /s/ Nancy H. Wojtas  
Nancy H. Wojtas

FIVE PALO ALTO SQUARE, 3000 EL CAMINO REAL, PALO ALTO, CA 94306-2155 T: (650) 843-5000 F: (650)  
849-7400 WWW.COOLEY.COM

**CONSENT OF INDEPENDENT REGISTERED  
PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 pertaining to the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan of our report dated March 26, 2012, with respect to the consolidated financial statements of NovaBay Pharmaceuticals, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2011.

/s/ OUM & Co. LLP  
San Francisco, California  
January 10, 2013

**DAVIDSON & COMPANY LLP** — Chartered Accountants — **A Partnership of Incorporated Professionals**

**CONSENT OF INDEPENDENT REGISTERED  
PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement of NovaBay Pharmaceuticals, Inc. (the "Company") on Form S-8 of our report dated March 26, 2010, relating to the consolidated statements of operations, stockholders' equity and cash flows for the Company for the year ended December 31, 2009, and for the period ended from July 1, 2002 (date of development stage inception) to December 31, 2009, appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2011 as filed by the Company with the Securities and Exchange Commission on March 27, 2012.

/s/ Davidson & Company LLP

**"DAVIDSON & COMPANY LLP"**

Vancouver, Canada

Chartered Accountants

January 11, 2013



1200 - 609 Granville Street, P.O. Box 10372, Pacific Centre, Vancouver, B.C., Canada V7Y 1G6  
Telephone (604) 687-0947 Fax (604) 687-6172