

NovaBay Pharmaceuticals, Inc.  
Form S-8  
January 30, 2009

As filed with the Securities and Exchange Commission on January 30, 2009

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)

**California**  
(State or other jurisdiction  
of incorporation or organization)

**68-0454536**  
(IRS Employer

Identification No.)

5980 Horton Street, Suite 550, Emeryville, California  
(Address of principal executive offices)

94608  
(Zip code)

**NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan**

(Full title of the plan)

**Ramin ( Ron ) Najafi, Ph.D.**

*With a copy to:*

**Chairman of the Board, Chief Executive Officer and President**

**5980 Horton Street, Suite 550**

**Chris Barry, Esq.**

**Emeryville, California 94608**

**Dorsey & Whitney LLP**

(Name and Address of agent for service)

**U.S. Bank Centre**

**(510) 899-8800**

**1420 Fifth Avenue, Suite 3400**

(Telephone number, including area code, of agent for service)

**Seattle, WA 98101**

**(206) 903-8815**

**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(2)</b>	<b>Amount of registration fee</b>
Common stock, \$0.01 par value, issuable pursuant to the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended and restated	858,766 shares	\$1.58	\$1,356,850.28	\$53.33
Total	858,766 shares	\$1.58	\$1,356,850.28	\$53.33

(1) This Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of outstanding shares of the Registrant's common stock.

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- (2) Estimated solely for the purpose of calculating the registration fee under Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, on the basis of the average of the high and low sales prices per share of the Registrant's common stock on January 27, 2009, as reported by NYSE Alternext U.S. LLC.

**PREFATORY NOTE**

Pursuant to General Instruction E to Form S-8, this Registration Statement on Form S-8 registers the offer and sale of an additional 858,766 shares of Common Stock of NovaBay Pharmaceuticals, Inc. (the Registrant) for issuance under the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended and restated (the Plan). The contents of the prior Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the Commission) on November 13, 2007 (File No. 333-147334), relating to the Plan, is incorporated herein by reference.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

In accordance with the Note to Part I of Form S-8, the information specified by Part I (Items 1 and 2) is omitted from this registration statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant hereby incorporates by reference into this Registration Statement the following documents, which have been filed with the Commission:

- (a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, filed with the Commission on March 14, 2008;
- (b) the Registrant's Definitive Proxy Statement on Schedule 14A filed with the Commission on April 23, 2008;
- (c) the Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, filed with the Commission on May 15, 2008, August 14, 2008 and November 14, 2008, respectively;
- (d) the Registrant's Current Reports on Form 8-K, filed with the Commission on January 15, 2008, December 17, 2008, December 31, 2008, January 7, 2009, January 14, 2009 and January 20, 2009; and
- (c) the description of the Registrant's common stock, par value \$0.01 per share, contained in the Registrant's Registration Statement on Form 8-A (File No. 001-33678) filed on August 29, 2007, including any amendment or report filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. The Registrant expressly excludes from such incorporation information furnished pursuant to Item 2.02 or Item 9.01 of any Current Report on Form 8-K. Any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement. Any such document or statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.



**Item 8. Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>	<b>Where Located</b>
4.1	Amended and Restated Articles of Incorporation of the Registrant	Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2007 (File No. 001-33628) as filed with the SEC on November 15, 2007
4.2	Amended and Restated Bylaws of the Registrant	Incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2007 (File No. 001-33628) as filed with the SEC on November 15, 2007
4.3	Specimen common stock certificate	Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-140714)
5.1	Opinion of Dorsey & Whitney LLP	Filed herewith
23.1	Consent of Davidson & Company LLP	Filed herewith
23.2	Consent of Dorsey & Whitney LLP (contained in Exhibit 5.1 to this registration statement)	Filed herewith
24.1	Power of Attorney (included in the signature pages to this registration statement)	Filed herewith
99.1	NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended	Incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2008 (File No. 001-33628) as filed with the SEC on August 14, 2008
99.2	Forms of agreements for use under the NovaBay Pharmaceuticals, Inc. 2007 Omnibus Incentive Plan, as amended	Incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-140714)

**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 30, 2009.

**NOVABAY PHARMACEUTICALS, INC.**

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

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**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. and Thomas J. Paulson, 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 either 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 either 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, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated below.

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> )	January 30, 2009
/S/ THOMAS J. PAULSON Thomas J. Paulson	Chief Financial Officer and Treasurer ( <i>principal financial and accounting officer</i> )	January 30, 2009
/S/ CHARLES J. CASHION Charles J. Cashion	Director	January 30, 2009
/S/ ANTHONY DAILLEY Anthony Dailley, D.D.S.	Director	January 30, 2009
/S/ PAUL E. FREIMAN Paul E. Freiman	Director	January 30, 2009
/S/ HARRY F. HIXON Harry F. Hixon, Ph.D.	Director	January 30, 2009
/S/ ALEX McPHERSON Alex McPherson, M.D., Ph.D.	Director	January 30, 2009
/S/ ROBERT R. TUFTS Robert R. Tufts	Director	January 30, 2009
/S/ TONY WICKS	Director	January 30, 2009



Tony Wicks

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